

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In Re:)	
)	Case No. 08-61570
)	
Yellowstone Mountain Club, LLC,)	
)	
Debtor.)	

THE HON. RALPH B. KIRSCHER, presiding

TRANSCRIPT OF PROCEEDINGS

Butte, Montana
March 4, 2009

Transcript Services:

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1 YELLOWSTONE MOUNTAIN CLUB BANKRUPTCY

2 BUTTE, MONTANA

3 - - -

4 BE IT REMEMBERED THAT this matter came on for
5 hearing on March 4, 2009, in the United States Bankruptcy
6 Court, District of Montana, The Hon. Ralph B. Kirscher,
7 presiding:

8
9 The following proceedings were had:

10
11 THE COURT: Good morning. Please be seated.

12 This is the date and time set for a number of
13 matters involving the Yellowstone Club, 08-61570; and a
14 couple of the adversaries.

15 We have the trustee's report regarding the
16 examiner; we have approval of Debtors' disclosure
17 statement; Credit Suisse's response to order granting
18 application to employ CB Richard Ellis, Inc., and request
19 for reconsideration; motion of Navistar Financial to assume
20 or reject; motion of Debtors to vacate order denying
21 Debtors' motion for bidding solicitation.

22 We have motion of CrossHarbor for protective
23 order; motion of Debtor to vacate order denying Debtors'
24 motion for bidding; expedited motion for valuation; motion
25 of GMAC to modify.

1 We have in the Adversary 09-10, motion for
2 expedited hearing on motion for temporary restraining
3 order; 09-14, we have a pretrial scheduling conference.

4 And as it relates to the motion of Navistar
5 Financial Corp. to assume or reject, I think that was
6 alternatively for adequate protection. That matter has
7 been settled, as I read the docket, by a consent to -- for
8 Debtor to pay adequate protection of \$1,286.96 a month. So
9 that matter is settled. It will be off the calendar.
10 We'll issue an order pursuant to the prayer that was set
11 forth in the consent filed by Navistar, which basically
12 asks for an order directing or requiring Debtor to
13 immediately commence monthly adequate protection payments
14 of \$1,286.96 no later than March 15th by the 15th day of
15 each subsequent month to Navistar by delivering payments to
16 a designated person's address. So we'll issue an order to
17 that effect. So that's off. The hearing is vacated on
18 that.

19 As it relates to the motion to modify, where are
20 we on that?

21 MR. PATTEN: Your Honor, it's my understanding
22 that GMAC would like to continue this hearing until, I
23 think it's next week. I had a brief discussion with
24 Mr. Binney, and I see that he's in the courtroom in
25 Missoula.

1 THE COURT: He is, he is.

2 MR. BINNEY: Yes, Your Honor, Jon Binney in
3 Missoula.

4 And if the Court could would deem today a
5 preliminary hearing and set it for a final hearing, I think
6 Mr. Patten and I can try to resolve this.

7 THE COURT: Okay. And given the response,
8 Mr. Patten, I guess I was a little confused. The motions
9 both reference three vehicles, I think; and your response
10 was only to two vehicles, one for each motion. I didn't
11 know if the others were resolved or if they were still an
12 issue.

13 MR. PATTEN: No. That must be an error in my
14 response, Your Honor. It's our position that there is --
15 not only are they necessary for a reorganization but that
16 there's equity in all of the vehicles.

17 THE COURT: As to all of the vehicles?

18 MR. PATTEN: Yeah.

19 THE COURT: Okay, okay.

20 MR. PATTEN: We're prepared to pay adequate
21 protection, and I think that's what -- Mr. Binney and I
22 just need the opportunity to work out the terms of the
23 adequate protection.

24 THE COURT: Okay. I will continue that matter
25 until March 10th.

1 MR. PATTEN: Thank you.

2 THE COURT: Nine o'clock.

3 MR. BINNEY: Thank you, Your Honor.

4 THE COURT: That concludes your matters,
5 Mr. Binney?

6 MR. BINNEY: Yes, Your Honor.

7 THE COURT: Okay. Well, before we get into all
8 the other matters that are still left pending, are there
9 other matters that have resolved or are we at issue on all
10 of them?

11 Mr. Patten.

12 MR. PATTEN: Your Honor, we met a week ago today
13 face-to-face and by telephone with various counsel relative
14 to the disclosure statement. We have spent pretty much
15 24/7 since amending the disclosure statement. And the
16 court docket will reflect that we filed an amended
17 disclosure statement on Monday, and we filed another one
18 last night at about one o'clock in the morning.

19 THE COURT: About midnight, yes.

20 MR. PATTEN: We believe that with the filing last
21 night, that we've met the objection of the creditors.

22 THE COURT: Have the creditors seen them, seen
23 the second amended? It was filed about midnight, maybe
24 quarter-to-one.

25 MR. PATTEN: My suggestion, Your Honor, is that,

1 out of fairness to everybody, if the Court set another
2 short deadline on objections and then reset this hearing
3 for next week, whether it's in Butte or Missoula, then we
4 could allow the objectors the additional opportunity to
5 look at what we filed last night, they can make their
6 objections, give us another chance to either look at those
7 objections and decide whether we want to try and meet them
8 or whether we'll fight about them, and then appear back in
9 court next week.

10 If the Court would like, we're prepared to go
11 through the disclosure statement and the objections kind of
12 line by line and show where we've met them.

13 THE COURT: I may give you an opportunity to do
14 that in just a moment.

15 MR. PATTEN: Okay.

16 THE COURT: Thanks. Since there are no other
17 matters that are resolved, I will ask all counsel that are
18 appearing to state their appearances for the record. And I
19 guess we'll just start with Mr. Patten.

20 MR. PATTEN: Andy Patten for the debtors.

21 MR. REAM: Good morning, Your Honor. Larry Ream
22 on behalf of the debtors.

23 MR. BIRINYI: I'm sorry, Your Honor. Richard
24 Birinyi from Bullivant Houser Bailey on behalf of the
25 debtors.

1 MR. MOORE: Paul Moore, counsel for CrossHarbor
2 Capital.

3 MR. McKAY: Dan McKay for the U.S. Trustee's
4 Office.

5 MR. GREEN: Barry Green for CrossHarbor Capital.

6 MR. ALTER: Jonathan Alter for the members.

7 MR. BECKETT: Tom Beckett for the Official
8 Committee of Unsecured Creditors.

9 MR. COSSITT: Jim Cossitt, local counsel for the
10 committee.

11 And I would like to introduce Derek Langton from
12 Parsons Behle & Latimer for whom we'll be filing a pro hac
13 vice very shortly, Your Honor.

14 THE COURT: Okay.

15 MR. CHEHI: Mark Chehi of Skadden-Arps for Credit
16 Suisse along with my colleague, Joe Larkin; and my partners
17 Rob Saunders, Evan Levy, and George Zimmerman who your Your
18 Honor was introduced to telephonically.

19 THE COURT: Okay.

20 MR. WARNER: Good morning, Your Honor. Michael
21 Warner on behalf of Highland Capital.

22 MR. BENDER: Ronald A. Bender on behalf of the
23 Class B unit members.

24 MR. GUTHALS: Good morning, Your Honor. Joel
25 Guthals on behalf of the Timothy Blixseth.

1 And I would like to introduce to you Michael
2 Gearin from Seattle who has been admitted pro hac vice and
3 will be co-counsel with me representing Mr. Blixseth.

4 THE COURT: Okay. Welcome.

5 MR. GEARIN: Thank you, Your Honor.

6 MR. GRANT: John Grant, local counsel for the
7 members.

8 MR. STENSLAND: Dean Stensland on behalf of Prim
9 Vintage Development.

10 MR. HURSH: Benjamin Hursh, local counsel for
11 CrossHarbor.

12 And, Your Honor, I'd also like to introduce
13 Robert Zaffrann from Duane Morris. His pro hac was filed,
14 approved, and the check was taken upstairs to the clerk
15 this morning.

16 THE COURT: Very well.

17 MR. ZAFFRANN: Good morning, Your Honor.

18 THE COURT: Those are important things. Anyone
19 else? I guess I don't see Mr. Hingle or Mr. Coleman, I
20 guess. Okay.

21 MR. DOAK: Jon Doak by telephone for James Murphy
22 and the Murphy Family Limited Partnership.

23 THE COURT: Oh, we do have a couple of people --
24 okay, Mr. Coleman I see. We do have a couple of people on
25 the telephone. If you can identify yourselves.

1 Maybe we don't.

2 MR. DOAK: Jon Doak for the Murphy Family Limited
3 Partnership, the Edwards firm, and James Murphy.

4 THE CLERK: Excuse me, you're going to have to
5 speak louder.

6 THE COURT: Well, obviously they're only
7 listening today because we can't hear them. So we've got
8 Mr. Doak, and I believe we had one other.

9 Mr. Sims?

10 MR. SILVERMAN: Your Honor, Joel Silverman and
11 Teresa Whitney from the Montana Department of Revenue.

12 THE COURT: Okay, very good.

13 MR. SIMS: And, Your Honor, Gerald Sims on behalf
14 of Mark Grosvenor.

15 THE COURT: Okay. I couldn't hear that, but I
16 think the clerk got it.

17 Okay, now we've got the preliminary things done.
18 We were talking about the disclosure statement and where we
19 were at on that. Have any of you looked at the second
20 amended that was filed at midnight?

21 MR. CHEHI: Your Honor, other than noting it
22 at -- it would have been, you know, 1 a.m. in the morning
23 when the actual amended plan of reorganization was filed.
24 And then about 3 a.m. eastern time, we noted that there was
25 the subsequent pleading. I have certainly not had any

1 opportunity to read those documents. They were not
2 hand-delivered to us today. We have no idea what the
3 changes are in them. There have been no black-lines filed
4 or served. And so our position on it is that today is not
5 the day for considering the disclosure statement hearing or
6 the adequacy of the disclosure statement because we've just
7 now received it and there were, actually, apparently
8 voluminous filings along with it of new documents that had
9 not been served before.

10 THE COURT: There are.

11 MR. CHEHI: And so we reserve all of our rights.
12 We would ask the Court to adjourn it until some later date
13 so we can all properly evaluate it and take it on in due
14 course.

15 THE COURT: Which probably leads into another one
16 of your requests, as well, but we'll take that up in a
17 moment.

18 Mr. Guthals.

19 MR. GUTHALS: Your Honor, on behalf Mr. Blixseth,
20 I have not had an opportunity to review these late filings
21 last night. And I concur with Mr. Chehi's position
22 regarding the disclosure statement hearing.

23 THE COURT: I'm sure all of you do, obviously.
24 And I guess with the filing, Mr. Patten, of the second -- I
25 think you've designated it the second amended. With that,

1 I'm assuming that supercedes your prior filings, your
2 original disclosure statement and the amended disclosure
3 statement --

4 MR. PATTEN: Yes, Your Honor.

5 THE COURT: -- and plan.

6 MR. PATTEN: Yes.

7 THE COURT: Okay. Based upon the filing,
8 obviously, the disclosure statements that are previously
9 before me - not the second amended, obviously, which is
10 filed - but the other ones are denied approval superceded
11 by the second amended which obviously will not be dealt
12 with today. And I will set a date and time for that before
13 we conclude today. So that will take care of the
14 disclosure statement matter.

15 Ms. Blixseth, I know you're appearing by video.
16 I have a couple of questions for you. One is: You can
17 hear us?

18 MS. BLIXSETH: Yes, I can.

19 THE COURT: Very good. We can hear you, as well.
20 Is there anyone else in the room with you?

21 MS. BLIXSETH: No, there's not.

22 THE COURT: Okay. If there should be anyone that
23 comes into the room during the proceedings, I would ask
24 that they please sit near you and identify themselves, who
25 they are. If they're just technological people, that's one

1 thing; but if they're counsel or others, I would want to
2 know who they are and I would want to be able to see them.

3 MR. CHEHI: Your Honor, for the record, when
4 Ms. Blixseth did come into the conference room, there is
5 another person with her. There is a second glass of water,
6 and he's off screen. And we're not sure whether that's an
7 attorney. And if it is an attorney representing
8 Ms. Blixseth - because I think there was a representation
9 on the record when it was set up that she was a client of
10 some sort - we would like to have the identification of who
11 it is who's representing Ms. Blixseth at this time.

12 THE COURT: Well, that was the point of my
13 question. She just indicated there's no one else there.

14 Is there anyone else in the room?

15 MS. BLIXSETH: No, there is not.

16 THE COURT: Okay. Mr. Patten?

17 MR. PATTEN: Your Honor, this brings up an issue
18 and a problem that I have. One of our witnesses, Steve
19 Lehr, who is the CBRE broker, is traveling today, and he
20 was traveling to Palm Springs. And we've provided him with
21 the address for this video conference in Palm Springs. But
22 he won't be landing until late this morning in Palm
23 Springs, which makes it noon Butte time.

24 And so if -- unless we are resolved with all of
25 the issues before noon, I would ask leave of Court to

1 present him maybe out of order on the issues that are
2 presented so that we can get his testimony before the
3 Court.

4 THE COURT: Okay. Also, I think Mr. Saunders had
5 informed us that there will not be anyone appearing from
6 London. Is that correct?

7 MR. SAUNDERS: That's right, Your Honor.

8 THE COURT: Okay. Do you have a preference as to
9 what we take up next, or should we just proceed with the
10 reconsideration of the professional application for CB
11 Richard Ellis?

12 Mr. Chehi?

13 MR. CHEHI: We would be happy to move in that
14 order, Your Honor.

15 THE COURT: Okay.

16 MR. CHEHI: I'll address the Court on that
17 motion.

18 THE COURT: Mr. Patten, did you have a comment?

19 MR. PATTEN: Well, Your Honor, if we could put
20 that at the end of the calendar, then our witness from CB
21 Richard Ellis would be available.

22 THE COURT: Okay, yes, that would fit, then,
23 wouldn't it? I'm sorry.

24 That would make more sense, Mr. Chehi.

25 MR. CHEHI: All right.

1 THE COURT: Okay. Well, in looking at this, do
2 you have a preference, Mr. Patten?

3 MR. PATTEN: My preference, Your Honor, would be
4 to deal with the discovery disputes first. I think the
5 Credit Suisse motion on reconsideration of CB Richard Ellis
6 and our motion for reconsideration of the order denying the
7 bid and solicitation procedures go hand in hand.

8 THE COURT: Okay.

9 MR. PATTEN: And I think if we dealt with maybe
10 some of the smaller issues first and then dealt with the
11 larger issues, which I think are the crux of the hearing
12 today - at least it is for the debtors - we can maybe clean
13 the calendar up a little bit before we get down to what is,
14 I think, critically important to the debtors.

15 THE COURT: Okay. Well, why don't we take up the
16 motion of CrossHarbor for protective order.

17 MR. ZAFFRANN: Your Honor, Robert Zaffrann again
18 for CrossHarbor.

19 It's our motion for a protective order. I don't
20 want to waste a lot of the Court's time if you've had an
21 opportunity to review the papers. Most of what I would say
22 is in there. But if the Court hasn't had time, I'll
23 briefly go through the background.

24 THE COURT: For everybody's benefit, why don't
25 you just do a short background.

1 MR. ZAFFRANN: The Court had ordered on February
2 20th that CrossHarbor respond to the requests in a Rule
3 2004 examination made by Credit Suisse. As soon as that
4 order entered in the scope of the electronic documentation,
5 CrossHarbor had already started gathering paper
6 documentation that didn't depend on the scope of, of the
7 Court's order in terms of time period and what limitations
8 were going to be included.

9 As soon as that scope was clear, we immediately
10 began on that Friday engaging Evidox, an electronic
11 harvesting document services company, to start harvesting
12 e-mails from all of the relevant computers at CrossHarbor.
13 Ultimately, that pull, because of the broad scope of the
14 requests and the time period involved, was about 60,000
15 e-mails. Sixty thousand is an enormous number. I was
16 personally involved in the review and production of that.

17 Basically, we started working around the clock as
18 soon as Evidox was able to harvest all of those e-mails and
19 get them in the software for the Duane Morris attorneys to
20 start to review, which happened about Sunday afternoon. We
21 immediately began review. We literally were working in
22 teams of 8, 9, 10 attorneys at a time reviewing these
23 documents straight through until late Thursday night or
24 early Friday morning. I personally worked around the clock
25 on one occasion and then past midnight the following night

1 trying to get this done. The point being, it's not a
2 sustainable pace for reviewing documents. But all that
3 being said, we were able to get through what we believe to
4 be substantially all of the relevant material documents in
5 our possession that are responsive to that request.

6 Now, there were some 35,000 e-mails that were
7 pulled out by a privileged search done for the lawyers.
8 And as I think -- we're not claiming that all of those
9 documents are necessarily privileged. The problem was: In
10 the five-day space of time, we just don't have enough time
11 to go through 35,000 e-mails. We went through 10,000 at an
12 unsustainable pace. It took us a week.

13 In order to go through those remaining 35,000,
14 it's fair to estimate it's going to cost \$1 million. You
15 know, it may be a couple hundred thousand less; it may be a
16 couple hundred thousand more, but it's going to be in that
17 ballpark. And it's going to take about four weeks, three
18 and a half - four weeks to do it; and then it will take
19 another three, three and a half, four weeks to put all of
20 the documents into a privilege log: Name, "to", "from",
21 date, description of the document.

22 It's just, it's a colossal task. And it's
23 something that CrossHarbor has understood the size of this
24 task from the beginning. And I want to impress on the
25 Court they have nothing to hide. If this production could

1 have been done in the 5, 7, 10 days in which Credit Suisse
2 has sought it, it would have been done a long time ago.
3 There would have been no negotiations that, you know,
4 ultimately ended up protracted because we couldn't get a
5 limitation on the scope. None of that would have happened.
6 But the problem was: We understood from the beginning that
7 this could not be done in the time frame that was being set
8 forth, and it was going to be an extraordinarily expensive
9 and extraordinarily time-consuming process.

10 So we tried to negotiate with them. At one
11 point, we suggested, you know, doing searches in the "to"
12 lines which would limit substantially the number of e-mails
13 that would have to be reviewed and potentially allow it to
14 be done in a two-week or a three-week time frame. Credit
15 Suisse did not want to agree to that. And so, ultimately,
16 when the Court entered the order, we did the best we could
17 with the time frame we had.

18 And now we're essentially seeking the Court's
19 guidance. You know, if the Court wants us to go through
20 those 35,000 e-mails one by one and do a privilege log, you
21 know, of tens of thousands of e-mails, we're happy to do
22 that. But the question at this point from CrossHarbor's
23 perspective is: Does that really make sense in the
24 cost-benefit analysis that the federal rules require in a
25 discovery thing like this?

1 Credit Suisse has gotten duplicative discovery
2 from the other parties involved in this. So while there
3 are pockets of e-mails that will be -- would be available
4 from CrossHarbor should such a review take place, there's
5 every possibility that most if not all of them may be
6 already produced to Credit Suisse. And so from
7 CrossHarbor's perspective, it seems to make a lot of sense
8 for Credit Suisse to review the voluminous documentation
9 that's already been produced; identify, you know, what
10 additional documents are not contained in the productions
11 of any of the parties; and then address what we need to do
12 from there at that point. But, you know, spending
13 \$1 million to potentially pick up some e-mails at the
14 margins just doesn't seem to be a valuable use of
15 resources.

16 Thank you, Your Honor.

17 THE COURT: Regarding the support of your motion,
18 do you intend to call someone to basically just establish
19 the cause that you've just kind of summarized?

20 MR. ZAFFRANN: I myself swore out an affidavit in
21 response to the motion because I was involved in the
22 production. So I can attest that the -- you know, while
23 the time values and the dollar values are estimates,
24 they're based on what we've done to this point and our
25 extrapolations out, given the, you know, three and a half

1 times as many e-mails that we're now being asked to review
2 in addition.

3 THE COURT: And you have the firsthand knowledge
4 of all of this, given your involvement?

5 MR. ZAFFRANN: I have the firsthand of every bit
6 of it, Your Honor.

7 THE COURT: Okay. I'm just going to have you
8 sworn for the record. Although you're an officer of the
9 court, I'm going to have you sworn, and then I'm going to
10 ask you a couple of questions.

11 MR. ZAFFRANN: Sure.

12 ROBERT ZAFFRANN, WITNESS, SWORN

13 THE COURT: The factual statements that you've
14 just summarized to the Court regarding the discovery, the
15 documentation, the expense involved, the numbers of
16 documents, the privilege log, and the amount of time that
17 would be required is true and correct?

18 THE WITNESS: It is, Your Honor. While some are
19 estimates, they are our best estimates based on the
20 knowledge I have at this time.

21 THE COURT: Although, there's probably an
22 objection. That's a compound question that I just asked.
23 I didn't hear any objections, so I assume it's waived.

24 And the factual statements that you've made are
25 based upon your personal knowledge?

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: Okay. I appreciate the comments.

3 Are there questions for this witness any of you
4 would like to raise?

5 MR. SAUNDERS: No questions, Your Honor.

6 THE COURT: No questions, okay.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Thank you. A statement in
9 opposition?

10 MR. SAUNDERS: Please, Your Honor.

11 THE COURT: Mr. Saunders.

12 MR. SAUNDERS: Your Honor, from the Credit Suisse
13 perspective, as I think Your Honor knows from the
14 motion-to-compel discussion, our view is that, you know,
15 whatever difficulty CrossHarbor is faced with at this point
16 is a difficulty of their own making.

17 From the beginning of this process, I would call
18 out to Your Honor's attention, I think, two fundamental
19 tactical decisions by CrossHarbor in the discovery process
20 that are responsible for them being where they are.

21 The first is that they essentially took the
22 position at the outset of the 2004 examination that they
23 were going to hold hostage the documents that they agreed
24 we were entitled to get while they attempted to persuade us
25 to scale back the 2004 examination. So completely contrary

1 to the way discovery would normally proceed in which a
2 party would produce the documents that it acknowledged it
3 was supposed to produce and fight about objections and
4 bring those objections, if they're not resolved, before a
5 Court, CrossHarbor took the position: We're not going to
6 do any work, we're not going to be produce anything to you,
7 we're not even going to begin the searches until we have
8 reached an agreement with you on scope.

9 The one element of scope in which we agreed to
10 scale back our request had to do with the date. We agreed
11 we would bring the beginning date forward from January 1,
12 2007, to January 1, 2008, but we weren't willing to agree
13 to the limitations -- other limitations on scope that were
14 requested. But rather than, again, as would have been
15 appropriate, to bring a motion for a protective order at
16 that point and say, "Hey, we've got a 2004 order in place.
17 We need a protective order against the burden that that's
18 going to impose on us or particular requests are going to
19 impose on us," CrossHarbor did nothing. Okay?

20 That led us up to the motion to compel. And Your
21 Honor, I'm sure, will remember leading into the motion to
22 compel - this is the second point - CrossHarbor made the
23 tactical decision that they were no longer going to assert
24 any of those objections to scope, that their position going
25 into that motion to compel was going to be: Okay, fine.

1 We will give you everything you're asking for. No longer
2 any burden objections. We will give you everything that
3 you're asking for; we just need more time.

4 And what Your Honor said, if you remember from
5 the call, was because we had been willing to give them the
6 entire week to make that production -- I think Your Honor
7 said you had been inclined to order them to do it by
8 Tuesday, but since we permitted it to be Friday, you gave
9 them the extra three days.

10 Now having lost on that tactical decision to make
11 the approach to Your Honor on the motion to compel of,
12 "Okay, we'll give them everything; we just need more time,"
13 having lost on that, now they want to reargue the other
14 position and reassert scope objections that they've
15 previously abandoned. And they shouldn't be able to do
16 that.

17 The last point I'd make, Your Honor -- two more
18 points. One is: We have essentially an admission, sworn
19 admission now, Your Honor, that there are documents out
20 there that are not privileged that they haven't produced.
21 And regardless of what you do with anything else, Your
22 Honor, surely we're entitled to get them.

23 There was no objection, no objection raised to
24 scope at the time of the motion to compel. We were
25 successful on the motion to compel. They concede now

1 because of the way they did their overly broad search for
2 privileged documents that they have privileged, that they
3 have non-privileged documents that they've yet to produce.
4 Okay? At a minimum, we've got to get those.

5 My last point, Your Honor, is their reply brief
6 invites us or suggests that the Court should be -- should
7 require us to make a particularized showing of what
8 particular documents we need. Well, Your Honor, we're
9 happy in the course of the motions today to show Your Honor
10 some of the documents that we've received Friday night, and
11 particularly, documents that we think are very relevant to
12 some of the issues that are on for today. We think we'll
13 amply make that showing. I don't think Your Honor even
14 needs to get to that because of the prior arguments that
15 I've made, but if that's what Your Honor wants to hang your
16 hat on, I think we'll present ample evidence of that today.

17 So I don't think it's reasonable, given the past
18 history, for CrossHarbor to come here now, try to resurrect
19 objections that they've previously waived, and say, "We
20 shouldn't have to give you documents that we know we have
21 and we know are non-privileged and responsive but just
22 don't care to give you."

23 Thank you, Your Honor.

24 THE COURT: Mr. Saunders, are these documents
25 that you already have from other sources?

1 MR. SAUNDERS: I don't know, Your Honor. We have
2 been through, in the course of Friday night to today, every
3 document that was produced to us Friday by CrossHarbor, by
4 Discovery Land Company, and by BGI. Okay?

5 There is some overlap in that there is some
6 e-mails, for instance, that were produced both by
7 CrossHarbor and by Discovery Land Company, but there were
8 some, some e-mails where there's no overlap. In
9 particular, there are some e-mails produced by Discovery
10 Land Company that were communications with CrossHarbor
11 people but where CrossHarbor didn't produce that e-mail,
12 which causes us to wonder how they did the e-mail search.
13 Okay?

14 But I don't know how I can possibly know. We
15 have looked at every document that's been produced to us by
16 any party, and I don't know how I can possibly know what
17 else might be in there, whether there are, whether there
18 are more e-mails that would be relevant that CrossHarbor
19 has that they haven't produced yet because they fell within
20 this overbroad privilege search.

21 THE COURT: Okay. Have you asked Mr. Levy if he
22 has knowledge of documents that were involved at all? I
23 understand in looking at the disclosure statement, he may
24 have some knowledge of transactions with CrossHarbor.

25 MR. SAUNDERS: You know, I'm not aware that

1 Mr. Levy has any knowledge of transactions with
2 CrossHarbor, Your Honor.

3 THE COURT: Okay. I just raise that. I mean it
4 sounded like he had some background and maybe had come
5 across some things just in his, his work.

6 MR. CHEHI: I'll say this, Your Honor - because I
7 was involved, you know, on a detailed basis in some of the
8 preliminary discovery requests and negotiations; and then
9 that became a career in and of itself managing the
10 CrossHarbor difficulties of getting them to produce - that
11 there are numerous categories of documents that go to
12 correspondence between CrossHarbor and its affiliate and
13 other parties in interest in the case that have not been
14 produced and that surely exist.

15 Because the selection of documents that are of
16 interest that we can show the Court today in the course of
17 these proceedings, which are germane to the issues, clearly
18 indicate that there are communications and activity that is
19 pervasive that we do not have the record of. And this goes
20 back through the entire period of time at least from
21 February 2008. And it is a fair representation that
22 there -- the 6,000 pages, I believe, that were produced by
23 CrossHarbor is a relatively small-scale production given
24 the entire scope of documents, which I think they
25 represented was 60,000 that they had gathered.

1 MR. SAUNDERS: If I could just add some numbers,
2 Your Honor, just so you know what we've done. What the
3 other parties have produced and what we have reviewed, and
4 this is based on the last few days: BGI produced 5,831
5 documents totaling almost 17,000 pages; Discovery Land
6 Company produced 4,300 documents totaling almost 24,000
7 pages; and both of those productions were very
8 substantially more than CrossHarbor's production, which was
9 about 7,000 - 8,000 pages all in, Your Honor, including
10 some hardcopy documents that are were produced.

11 THE COURT: What is it you don't know?

12 MR. SAUNDERS: Well, we don't know what we don't
13 know, Your Honor. We know quite a lot now.

14 THE COURT: I understand that. It's rhetorical.
15 Obviously, you don't know if you haven't seen it.

16 But it's just real interesting from the
17 standpoint that -- let me ask it this way, and maybe
18 Mr. Chehi needs to respond, as well, Mr. Saunders: What's
19 the goal here? Credit Suisse in this whole process and
20 procedure, what is your goal? What do you want to see
21 done, accomplished through this whole case and through the
22 adversaries? I mean it's a fair question.

23 What are your goals?

24 MR. SAUNDERS: I think the goal, Your Honor, is
25 to maximize the recovery for our clients, right?

1 But the goal that is specific to discovery,
2 right, is to try to find out what has happened, find out
3 what is there. Even in the self-selected production that
4 we got that is, again, admittedly by CrossHarbor not
5 complete and admitted by CrossHarbor that they have
6 documents that are not privileged that they haven't
7 produced to us yet, even from that, as Your Honor will see
8 today, we have a lot of documents that give us very great
9 concerns about what has happened and what is happening
10 here. And if there are more documents, right, that --

11 THE COURT: So what do all these documents go to?

12 MR. SAUNDERS: The documents that we'll take Your
13 Honor through today go to the, the very close relationships
14 throughout these cases - prepetition and postpetition -
15 between CrossHarbor, Discovery Land Company, and
16 Ms. Blixseth.

17 THE COURT: Okay. And so going through that
18 whole process, what does it accomplish in the end as it
19 relates to the goal of getting the maximization of assets?

20 MR. SAUNDERS: Well, I think it creates, it
21 creates a record one way or the other. It creates a record
22 one way or the other from which we can go forward to a
23 plan, right, that is going to be proposed by somebody who
24 Your Honor can either trust or decide needs to be replaced
25 and put somebody in who can be trusted, right, and a

1 process that can be trusted so that at the end of the day,
2 we'll have a plan that we can all rely on as having been
3 sponsored by people who were trustworthy and who were
4 complying with their fiduciary obligations to the estates
5 to the extent that they had them.

6 THE COURT: But in the end, your goal is to get
7 \$310 million or more, right?

8 MR. CHEHI: Your Honor, our goal is to maximize
9 the recovery for our clients, make sure that the Chapter 11
10 process in which we're involved and which is the forum for
11 vindicating our clients' claims and interests has
12 integrity. And the documents that we have discovered to
13 date and what are, I think, limited productions of what is
14 available during a relatively finite time period will
15 definitely be of interest to Your Honor and call into
16 question some of the representations that have been made,
17 some of the testimony that's been given in court; and will
18 put, I think, the issue of good faith of the plan that the
19 debtors are proposing, the good faith of CrossHarbor in
20 connection with anything it's done in this case so far into
21 question. It will certainly put into question Discovery
22 Land Company's employment by the debtors and their
23 involvement with the -- with CrossHarbor during a period of
24 time that far exceeds anything that was disclosed by those
25 parties in connection with any testimony in this Court or

1 in the debtors' applications to employ. There are very
2 serious issues here.

3 I think that -- I'd just ask the Court to take
4 note, as I'm sure you're aware of, the U.S. Trustee has
5 filed a motion for appointment of a Chapter 11 trustee.
6 That's not us filing it, Your Honor; that's somebody else
7 doing that unilaterally. And that raises -- that should
8 raise significant concerns to this Court.

9 THE COURT: Well, which goes to this comment:
10 We've got an examiner; we've got an unofficial creditors
11 committee; we have, what, Group B, I probably don't have
12 the name right, but we have some other members out there;
13 we have a motion for a trustee. If, in fact, there are
14 issues that can be established along what you are alleging,
15 it seems like we've got about three or four avenues to
16 establish that.

17 And is it necessary at this time to continue with
18 all of this discovery? Given the discovery that you
19 already have and the arguments you have, is it easier to go
20 forward and get it into a bidding situation?

21 MR. SAUNDERS: Well, Your Honor, if that's Your
22 Honor's view, then the last suggestion that I would make is
23 that you withhold judgment on the motion for protective
24 order until you've heard the evidence on the other motions
25 today.

1 THE COURT: I'm really torn here because I
2 understand the need to discover documents, but it seems
3 like we've got about three or four entities that are doing
4 that. And is the ultimate goal of all of that to
5 reorganize this debtor or to throw this debtor into either
6 a conversion or a dismissal?

7 And where does that leave all of you? It may
8 leave you, I guess, with state foreclosure laws all
9 fighting it over priorities and marshaling. But I don't
10 know that that's of benefit to the entire case.

11 MR. CHEHI: Your Honor, we're interested in
12 maximizing the value of our recovery which means maximizing
13 the value of these assets as going concerns. There is no
14 one -- we are not sitting here today saying, "Oh, boy, we
15 hope that everything burns down." That would be an
16 irrational position for the lenders to take.

17 But what the lenders are confronted with is a
18 plan of reorganization which is attempting to deny the
19 lenders their rights to vindicate their interests. It's a
20 plan of reorganization that has been proposed -- as Your
21 Honor, I believe, concluded to some extent in the last
22 order of the bidding procedures, it's a program that is
23 serving insider interests. And there are inherent
24 conflicts of interest. We are very concerned about that.

25 Because everyone seems to think that we should

1 have a diminished recovery in the case and others in the
2 case should receive the benefits of the Chapter 11 case and
3 the benefits of our collateral and the benefits of the
4 value that's incorporated in these businesses. We
5 disagree.

6 And CrossHarbor is not some innocent third party
7 standing on the sidelines watching; they're a prime mover
8 in this. And, again, the documents will show that. And
9 they are the ones that are sponsoring this plan, they are
10 the ones that are exercising control over Ms. Blixseth,
11 they are the ones that are exercising control over the
12 debtors through the debtor-in-possession financing terms,
13 they are the ones that have not committed to any definitive
14 agreement. They are not bound by anything in this case,
15 Your Honor. They're holding the cards of the DIP financing
16 order, and they can pull the plug at any time and take the
17 collateral, and they could be very disruptive. We are the
18 only --

19 THE COURT: Which was the position that Credit
20 Suisse was wanting to be in, right?

21 MR. CHEHI: The position that we wanted to be in,
22 Your Honor, was to have an appropriate, an appropriate
23 Chapter 11 case in which our funding of the cases would be
24 based upon appropriate budgets for appropriate purposes
25 with an appropriate track towards confirming a meaningful

1 plan; not a plan that is a litigation plan against the
2 lenders. Clearly, we wouldn't want that to happen. But
3 that's where we are.

4 THE COURT: Well --

5 MR. CHEHI: No one else has taken discovery, Your
6 Honor. When you say there are these other parties in
7 interest --

8 THE COURT: Well, there are other parties that
9 have responsible or will have the responsibility for
10 investigation. I mean we haven't defined the examiner's
11 role at this point, and that will be done subsequent once
12 we know where we're at with an examiner. The U.S.
13 Trustee -- I mean if a trustee is appointed, certainly
14 there is some responsibility there to investigate and find
15 out what's going on. The official creditors committee is
16 certainly doing some things.

17 And I guess, you know, the thing that kind of
18 bothers me in this whole process is we wouldn't even be
19 having some of these discussions if, in fact, November
20 would have turned out differently. And I hate to keep
21 dwelling on that. But for your failure to provide the
22 final DIP financing, we wouldn't even be here.

23 MR. PATTEN: Your Honor, may I be heard?

24 THE COURT: Mr. Patten.

25 MR. PATTEN: Since November, since this Court

1 entered its interim DIP loan approval for the CrossHarbor
2 DIP loan, we've been engaged in -- Mr. Chehi characterized
3 it as a "litigation plan", and that's what we've been
4 doing. We've been spending huge amounts of time fighting
5 on issues that really are extraneous at this point to
6 what's at issue. And it seems to me that what's at issue
7 is whether the process that is proposed or is adopted by
8 this Court to expose this property to the market is fair,
9 is transparent, and will generate the maximum recovery.

10 If there's some past nefarious activities between
11 CrossHarbor and Discovery Land Company and the debtor
12 doesn't make any difference if, in fact, going forward we
13 have an appropriate process. But, instead, we're
14 constantly diverted from the real issues.

15 THE COURT: Well, but Mr. Patten, Credit Suisse
16 is exactly saying that, that they feel that going forward
17 to get to the end of this, there is some alleged activity
18 that may prevent that.

19 MR. PATTEN: But this Court will set the -- we're
20 asking the Court to set a bidding and solicitation
21 procedure order. And if that order is fair and appropriate
22 - and I'm sure that, with all due respect for Credit
23 Suisse, they're going to oppose it no matter what it is
24 unless they get to write it, like they've wanted to direct
25 this case from the very beginning - if that order is fair

1 and appropriate, then it's fair and appropriate without
2 regard to whether there has been some past bad acts between
3 the debtor and CrossHarbor and Discovery Land Company.

4 But in the meantime, we're spending huge amounts
5 of resources, we're being diverted, and it's trying to take
6 our eye off the ball which ought to be to get this property
7 on the market, expose it, and sell it, which is what we
8 want to do. And what I think is the critical issue for
9 this Court to address today is to get that process going
10 and not be diverted by, by all of these other issues that
11 CrossHarbor -- or, excuse me, that Credit Suisse keeps
12 raising that, I think, simply misdirect our attention.

13 THE COURT: Mr. Chehi, I know you've probably
14 considered -- you've talked about it. And I don't want
15 your conclusions at all; I'm just, I guess, raising a
16 question: Does 1111(b) assist in maximizing the value
17 of -- well, assist in you receiving the amount that's owed
18 to Credit Suisse?

19 MR. CHEHI: We have no idea, Your Honor, what
20 1111(b) is going to do for us in this case. Our claims
21 have not been allowed; they've been disputed by the plan
22 and by the committee. Our liens have been challenged. And
23 the debtors seem reluctant to have a hearing on valuation
24 of our collateral notwithstanding the fact that there's
25 already been a valuation proceeding in this case.

1 We will exercise or not 1111(b) rights at the
2 appropriate time once there's been essential findings made
3 as to what that will mean. Because when you're exercising
4 1111(b) rights, it has -- values are implicated, amount of
5 claim is implicated in terms of the treatment that you're
6 entitled to receive.

7 We think that the plan that they filed, and I
8 haven't read their new plan - assume it's not much
9 different - it provides unconfirmable treatment for us. It
10 also would be unconfirmable if we elected 1111(b). But
11 that's not the issue. We don't want to be jumping ahead
12 here to what the ultimate outcome is, which should be a
13 consensual plan process, but there's been no
14 consensus-building by the debtors notwithstanding these
15 comments.

16 We seem to be being blamed because we have
17 objected to and litigated the issues of priming in this
18 case because we didn't show up with the money at the last
19 minute. And we've given the reasons for that. And Your
20 Honor can feel badly about that and everyone can feel badly
21 that we didn't materialize with the DIP funding in November
22 when everybody expected that we would, and we expected we
23 would. But given, again, larger economic circumstances in
24 the real world, that was not possible. We should not be
25 penalized because of that for the balance of this case. We

1 should be allowed to vindicate our rights and not be
2 railroaded through a plan process which is an
3 insider-driven plan.

4 When one looks at the record of what has been
5 testified to in this court and then one looks at the
6 documents, you start to see some differences of view in
7 what really happened and what the parties - who have been
8 proposing this plan and sponsoring it and who have been
9 managing these companies prepetition and postpetition -
10 have really been up to.

11 THE COURT: Okay. Mr. Chehi, what could be done
12 to develop some consensus-building?

13 MR. CHEHI: Your Honor, we have indicated to all
14 of the other parties that we're prepared to talk about a
15 consensual plan. But the plan that's on the table seems to
16 be moving forward on a rapid path towards, again, putting
17 us in a position where our claims are challenged and
18 litigated. And we won't know the outcome of that until
19 after the plan is confirmed. We can't let that stand.

20 THE COURT: Well, I guess I'm just asking: What
21 could be done to develop the consensus? What treatment are
22 you looking for that's going to improve the
23 consensus-building?

24 MR. CHEHI: We'd like to have our claims valued.
25 We'd like to be able to credit bid on our collateral, all

1 of which is precluded by the plan. We would like to be
2 able to propose a plan that's different than the insider
3 plan that's on the table which has been consuming enormous
4 resources.

5 It's not our fault that the plan was filed after
6 midnight last night. They don't send us drafts of their
7 plans, they don't send us drafts of their proposals. We
8 read about them in the newspaper and in the court pleadings
9 about the same time you get them. That's the nature of the
10 debtors' efforts to negotiate with their largest creditors.
11 And we don't feel confident that anyone else in the case is
12 looking out for our interests, certainly not the unsecured
13 creditors committee. They're joined at the hip to
14 the plan.

15 THE COURT: Well, maybe there shouldn't be any --
16 maybe exclusivity should end and interested parties can
17 file their competing plans.

18 MR. CHEHI: Your Honor, we were going to bring
19 that up today in due course and say that now is the time -
20 given that a Chapter 11 trustee motion has been filed,
21 given that Your Honor indicated that an extension of
22 exclusivity was inappropriate - we think it is, indeed,
23 time immediately to terminate the debtors' exclusive rights
24 so that other competing alternative plan structures can be
25 proposed. And we're happy to propose those if we have the

1 opportunity to do it. And that's the right outcome in the
2 case.

3 But it's also the right thing for this Court not
4 to believe -- or continue to believe that the reluctance of
5 CrossHarbor or other parties to produce documents is the
6 result of our scorched-earth litigation tactic. We're not
7 engaged in that, Your Honor.

8 THE COURT: I don't think we've heard that term
9 yet in this proceeding, at least on the record.

10 MR. CHEHI: I have heard that, and I've seen that
11 in pleadings.

12 THE COURT: Okay. Well, I guess I'm just
13 wondering: If, in fact, there's no exclusivity and
14 interested parties have the right to file a plan, that
15 resolves some of the issue over the need for your
16 production of documents, doesn't it? Because then you can
17 propose something that would --

18 MR. CHEHI: The good faith of the debtors' plan,
19 Your Honor, which proposes to transfer a control of
20 Yellowstone Club to CrossHarbor and to Discovery Land
21 Company is very germane to the merits of that plan and
22 whether it's confirmable.

23 THE COURT: Well, but if you've got a competing
24 plan --

25 MR. CHEHI: If we don't have a competing plan or

1 if we do have a competing plan, the merits of their plan
2 require satisfaction of those -- that confirmation
3 requirement and others. And we have the right, and we
4 should have the right --

5 THE COURT: Well, but at that point in time,
6 we're at a plan hearing which provides some additional time
7 for the production of remaining non-privileged documents
8 that could go to testimony at that point in time.

9 MR. CHEHI: Your Honor, I would encourage you to
10 do two things today.

11 Number 1 is: Let's have a valuation hearing on
12 our collateral. We're prepared to go forward on that.

13 And then No. 2, and maybe immediately:
14 Mr. Saunders can put on witnesses and can walk through a
15 sampling of the documents that were received from the
16 parties on Friday.

17 And it only took the Skadden-Arps team of, I
18 don't know, four or five lawyers, associates, to go through
19 these documents, all of them. And I don't know what the
20 aggregate number is, but it's --

21 UNIDENTIFIED SPEAKER: About 13,000.

22 MR. CHEHI: About 13,000 pages of documents. It
23 took them, in essence, less than a day. And so all the
24 talk about how burdensome all the production of documents
25 is, no matter what the numbers are that they're reciting,

1 it's not that big a task, Your Honor. People are holding
2 back because even what they've given us doesn't look good;
3 and if they have to give us everything that they have, it's
4 going to look very bad.

5 And we'd like to put on those documents now and
6 then let Your Honor decide what's the right approach to the
7 discovery issues and to some of these other matters and
8 what the real equities are in the case. We're not making
9 it up. These documents are going to speak for themselves.

10 THE COURT: Okay. Thank you, Mr. Chehi.

11 Mr. Patten.

12 MR. PATTEN: Your Honor, without getting into
13 particular details, arguing with Mr. Chehi, there's
14 certainly two sides to the story about how everyone is
15 getting along. And on behalf of the debtors, we have tried
16 our level best to work out consensual arrangements with
17 Credit Suisse, and we have been unsuccessful.

18 With regard to credit bids and 1111(b), Credit
19 Suisse can make an 1111(b) election right now. And if they
20 did, it would set very clearly the path that this case
21 would have to go down. But they're looking for reasons not
22 to make an 1111(b) election in order to keep everything up
23 in the air for as long as they can, which again, simply
24 diverts us and misdirects us from getting the job done that
25 we're here to do which is to expose this property to the

1 market, see what the market says that it's worth, and sell
2 it at that. And that's the procedures that we want the
3 Court to order and to allow to be done, is to accomplish
4 that very purpose.

5 THE COURT: Mr. Warner.

6 MR. WARNER: Thank you, Your Honor. Your Honor,
7 I represent Highland Capital Management. We're one of the
8 lenders in the group represented by Credit Suisse. We have
9 some \$40 million of debt in this project, so I'm a real
10 player in this.

11 And I agree with the debtors' counsel. The
12 debtors' counsel said we want to expose the property to a,
13 quote, fair and transparent process. I don't think there's
14 a soul in this room that disagrees with that as an
15 objective. Credit Suisse, Highland, the debtor, we all
16 agree. The problem is: You're being asked today in a
17 motion that's pending to approve bid procedures that will
18 have as fundamental element placing CrossHarbor as a
19 stalking horse.

20 Now, there's one provision alone that should
21 stand out that should say why this discovery is important
22 as a prerequisite to even considering that motion, and that
23 is: If CrossHarbor is somehow tainted either prepetition
24 or postpetition, you are anointing them as stalking horse
25 and you are granting them a break-up fee of \$2 million plus

1 1 million in expenses, capped at 1 million in expenses.

2 Today, you're giving them that approval if you
3 approve this bid procedure. And by doing so, you're
4 absolutely finding that at least for this stage of the
5 game, CrossHarbor is in good faith. We don't know that.
6 We don't have the discovery. And as the Court pointed out,
7 you don't know what you don't have -- or you don't know
8 what you don't know. And as a result, unless we get this
9 information, this Court should not be considering approving
10 a bid procedure that anoints someone a stalking horse.

11 We're putting them in the spot of controlling
12 things, of setting rules, of getting money if someone
13 overbids them. Now, whether that happens or not is
14 irrelevant. We're giving them that blessing, and that's a
15 good-faith finding at this moment. That shouldn't happen
16 until we have vetted. And if you hear some of the basic
17 testimony from Credit Suisse, just a sampling of it, you'll
18 see why this is premature and that the discovery should go
19 forward.

20 THE COURT: Thank you, Mr. Warner.

21 MR. WARNER: Thank you, sir.

22 MR. ZAFFRANN: Your Honor, I just wanted to
23 address a couple of the points that were made by
24 Mr. Saunders.

25 And I think, you know, from CrossHarbor's

1 perspective, Your Honor hit it right on the head. When
2 there's a trustee that's going to be appointed, when
3 there's an examiner already appointed, they'll be charged,
4 one or both of them will be charged with investigatory
5 duties. And CrossHarbor would feel perfectly comfortable
6 with them investigating, determining, you know, whether
7 there's any question of good faith here or not; but not
8 simply relying on the fact that Credit Suisse alleges that
9 there's not good faith.

10 It's an enormous process. It's enormously
11 expensive. And the description Mr. Saunders gave of the
12 scope of what they're leaking for is extraordinarily vague.
13 And, you know, we could spend \$1 million doing this, and
14 then he would ask for \$1 million more worth of discovery.
15 It can never end, given the scope and the vague allegations
16 that they've put forward.

17 CrossHarbor would be happy if this could be done
18 in a short period of time to let them investigate and
19 search these e-mails to their heart's content. They're not
20 going to find what they're looking for. But to suggest
21 that they should spend -- you know, I should spend the next
22 two months of my life working 10 hours a day searching
23 through these e-mails I think is an awfully big burden to
24 impose on somebody.

25 THE COURT: Well, but for you just to have made

1 that statement would suggest to me you've reviewed all
2 those in order for you to say they won't find anything.

3 MR. ZAFFRANN: I have not reviewed them all. I'm
4 familiar with what my client tells me, I'm familiar with
5 the general situation. We have no concerns about producing
6 the documents.

7 And when Mr. Saunders suggests that there was
8 some sort of tactical strategy not to start producing
9 electronic documents, it ignores the reality of an
10 electronic document production. When they initially asked
11 for documents, they were asking for documents for a whole
12 other additional year. We ultimately recently got them
13 down to January 1, 2008, through February 18, 2009. But
14 they were asking for January 1, 2007, which, given the
15 scope of the production we've had, one assumes that's
16 another 60,000 e-mails. If we had immediately just waived
17 all objections and started doing electronic searches on
18 that, we would have spent two months and \$1 million looking
19 through those e-mails which they're not even looking for
20 anymore.

21 THE COURT: Well, given what you're saying, I
22 mean there's a tremendous amount of e-mail traffic.

23 MR. ZAFFRANN: There's a huge amount. The period
24 that we're looking at is in the midst of an incredibly
25 active bankruptcy case. There is people that live on their

1 BlackBerrys, probably everybody in this room. It's
2 astounding how many e-mails in a given day are harvested.

3 THE COURT: But all of that was occurring prior
4 to the bankruptcy and prior to CrossHarbor even knowing if
5 they would be or would not be a DIP lender.

6 MR. ZAFFRANN: The e-mail traffic could --

7 THE COURT: So we're going back, basically,
8 during the sale negotiations period, as well, with
9 Mr. Blixseth?

10 MR. ZAFFRANN: The search right now has been
11 through January 1, 2008, so it goes back to that time
12 period. And I mean the e-mail is not exclusive to the
13 bankruptcy case. You know, in this day and age, people are
14 on their BlackBerrys pretty much 24/7. So there's a huge
15 volume of e-mails to look through.

16 THE COURT: Maybe it says something about the use
17 of BlackBerrys.

18 MR. ZAFFRANN: I think it probably does, Your
19 Honor.

20 The final point I wanted to make was that the
21 discovery that they've requested is also -- there's been
22 permutations over time. So if we had originally started to
23 respond to their original 13 requests for discovery, done
24 all that, searched through every document over the course
25 of three or four months, they then added 4 or 5 or 6 more

1 requests.

2 Now, that doesn't -- in an electronic production,
3 you can't just, "Oh, well, we've already searched through
4 these papers; now we just have this small stack to look for
5 this." No, you have to go back through the entire
6 production one more time to look for these additional
7 categories that they're looking for. I mean every
8 additional request requires that you look through 60,000
9 e-mails.

10 THE COURT: You do have production of what you
11 consider non-privileged at this point that are available?

12 MR. ZAFFRANN: We have produced to them, I
13 believe, in excess of 6,000 pages of electronic and another
14 close to 1,000 pages of paper that are both relevant and
15 non-privileged.

16 THE COURT: Okay. But there's still some other
17 non-privileged that you're aware of in your search that
18 have not been provided?

19 MR. ZAFFRANN: I'm not specifically aware of, you
20 know, particular pockets of e-mails. I don't doubt that
21 there are such pockets in the 35,000 that have -- were
22 caught by the search for privilege. Because it was, by its
23 nature, a broad search to try to make sure that nothing
24 privileged got produced.

25 You know, and if there is a way to narrow that by

1 doing specific search terms - if they want all e-mails with
2 Ron Greenspan in there, for instance - we can do a search
3 and dramatically reduce the scope of e-mails we would have
4 to do. But there has to be very specific parameters that
5 would allow us to do a search in the "to" field or the
6 "from" field to pull out those e-mails. So if Your Honor
7 is considering continuing the discovery, that, I think,
8 would be a proposal that would make a whole not more sense
9 than having us go through 35,000 e-mails and then do a
10 privilege log, you know, for the tens of thousands that are
11 not -- or that are privileged.

12 MR. CHEHI: Apparently, Your Honor, what they
13 have done is they've said that, "If there's any
14 e-mail/electronic data out there that has an attorney's
15 name on it, then we're just going to throw that in the
16 bucket of 'potentially privileged'."

17 But the issue is that they have had many
18 communications with parties who are not represented by
19 CrossHarbor's counsel which they may have copied
20 CrossHarbor's counsel on, but those are not privileged
21 communications. And that's the universe of the balance
22 between 60,000 and what we've seen is their broad net so
23 nothing privileged could possibly be produced. They get an
24 opportunity to look at every document before they produce
25 it.

1 We're talking about having them actually produce
2 documents that are non-privileged notwithstanding the fact
3 that they shared those non-privileged communications with
4 their own attorneys. Just putting a lawyer's name on a
5 document doesn't make it privileged, but that, apparently,
6 is the search that they -- or the basket that they've
7 created. And that's our fundamental problem.

8 But again, Your Honor, I recommend: Let's take
9 some time here to start walking through some of the
10 documents that came out of their own selective production.
11 And that, I think, will let the Court know that there's
12 need to investigate further.

13 THE COURT: Well, before I get to that,
14 Mr. Patten -- and I'm trying to get my arms around this
15 because I'm troubled about where it's at, seriously
16 troubled about where this whole process is at. So I'm
17 trying to get a broader perspective.

18 Has there been any contemplation of using a
19 different stalking horse?

20 MR. PATTEN: If Your Honor will recall, on
21 November 24th to 25th, whenever that was, we were operating
22 under a Credit Suisse term sheet, and it had certain terms
23 and conditions. Credit Suisse was unable to fund the
24 continuing DIP loan.

25 THE COURT: Right.

1 MR. PATTEN: And CrossHarbor took - and
2 CrossHarbor people can speak to this - but CrossHarbor took
3 the Credit Suisse term sheet and plugged its name in in
4 place of Credit Suisse.

5 THE COURT: Right.

6 MR. PATTEN: One of the conditions that was a
7 Credit Suisse condition and it carried through to a
8 CrossHarbor condition was that the lender had to consent
9 and approve the proposed plan; if not, then we're in breach
10 of the DIP loan. So right away, we were constrained. We
11 would have been constrained with Mr. Chehi telling us what
12 the plan was or CrossHarbor's attorneys telling us what the
13 plans were. So with that in mind, CrossHarbor had to
14 consent to the plan, and this is the plan that they
15 consented to.

16 We also had the same time periods that carried
17 over from the Credit Suisse term sheet to the CrossHarbor
18 term sheet. Now, CrossHarbor has agreed to extend the
19 deadline to confirm the plan by 30 days. So they've been
20 generous, if you will, in that regard and extended the time
21 period. But, otherwise, we have been constrained by a
22 series of parameters that were originally dictated by
23 Credit Suisse and then adopted by CrossHarbor as part of
24 the DIP financing.

25 MR. CHEHI: Your Honor, I'm going to just recall

1 for the Court Mr. Greenspan's testimony, I believe it was
2 at the last hearing, where he was confronted with the fact
3 that, actually, the DIP financing term sheet - and terms
4 Your Honor approved, the CrossHarbor financing - provided
5 that it would be a default under the debtor-in-possession
6 financing facility if a plan acceptable to CrossHarbor were
7 not filed before February 13th unless the Court entered an
8 order before February 13th terminating the debtors'
9 exclusive periods. That was, I believe, at a February 10th
10 hearing or thereabouts.

11 What he just said to you is not true. It may be
12 what their view is of it, but that document did not
13 require, the DIP financing did not require that the plan
14 that the debtors proposed would be acceptable to
15 CrossHarbor. All it required was that either they do file
16 a plan acceptable to CrossHarbor or, alternatively, the
17 Court would enter an order terminating exclusivity. They
18 chose -- notwithstanding the disclosure to Mr. Greenspan
19 where he, apparently, on the stand didn't quite understand
20 that term of the DIP financing, they moved ahead,
21 nevertheless, over the weekend of February the 13th to file
22 a plan and not seek an extension -- a termination of
23 exclusivity which would have allowed them to preserve their
24 DIP financing, allowed them to have more negotiating
25 leverage with CrossHarbor. They took the position they

1 couldn't do it. That's not what the documents say. And
2 they turned it back on us as if it was our fault because
3 those were the terms in the initial term sheet that was
4 being proposed.

5 But what they've done is they've relied upon
6 their view of it. And they've not only filed a plan that's
7 acceptable to CrossHarbor, it's a plan that gives
8 CrossHarbor the business, gives them control of it. And
9 that is -- and as a stalking horse nonetheless. That is
10 far above and beyond filing a plan acceptable to
11 CrossHarbor, and it certainly was not a plan that needed to
12 be filed by February 13th.

13 MR. PATTEN: Your Honor, I'll be brief.

14 But if the exclusivity period ends, then there's
15 going to be chaos. We can't sell the property with
16 multiple competing plans out there. It's going to be utter
17 chaos. And I think Mr. Chehi realizes that it will be
18 utter chaos. This whole case is becoming utter chaos, and
19 it's time to take -- to focus and get to the end of the
20 game here. And these various alternatives suggested don't
21 get the job done; they just create continuing fights,
22 disputes, and chaos among all of the parties. And, again,
23 it's just nothing but misdirection and taking our eye off
24 the ball.

25 THE COURT: Mr. Beckett.

1 MR. BECKETT: Thank you, Your Honor. And I
2 apologize to Mr. Chehi.

3 I have to fight to get out of the corner. I
4 didn't mean to stand up while you were talking and stand
5 there.

6 MR. CHEHI: No offense taken.

7 MR. BECKETT: Thank you. There's a lot up in the
8 air, Your Honor, and I wanted to give you my perspective
9 and the committee's perspective, if that would be helpful
10 to the Court.

11 THE COURT: Certainly.

12 MR. BECKETT: And I also wanted to be up here in
13 case you had any particular questions that I can address.

14 I would begin comment with an observation with
15 respect to selling assets in bankruptcy. I'm not the
16 expert on the point, but it seems to me that if you have an
17 asset that's a fairly simple estate asset - a lot, a
18 vehicle - you can either put it up for auction or you can
19 find someone who wants to buy it and do a simple contract
20 and notice it out and see if somebody else wants to bid.
21 As the complexity of the asset being sold by the debtor
22 increases, that protocol will fall apart.

23 And it is because you -- as you get to a more
24 complicated asset, you do need a stalking horse, because
25 you do need somebody who has a break-up fee so that they

1 have some protection for doing the due diligence and
2 writing the agreement under which they'll purchase the
3 asset. That agreement reflects an awful lot of work on the
4 part of the debtor and the acquiror so that it shows other
5 people how it can be done. And the stalking horse is not
6 going to be willing to do that unless the stalking horse
7 has the benefit of a break-up fee and can do that.

8 As the complexity of the asset increases further
9 -- and I think here, Your Honor, this is probably one of
10 the more complicated assets that has been sold recently in
11 a bankruptcy. As the complexity of the asset increases
12 further, not only do you have to have a stalking horse, but
13 you most probably have to have a stalking horse who is an
14 insider. And I don't know if CrossHarbor is an insider
15 under the code. They certainly know more about this asset
16 than anyone else -- perhaps not more than the debtor. I
17 think Credit Suisse knows an enormous amount and
18 Mr. Blixseth knows an enormous amount. There are a lot of
19 people who know an enormous amount, and they would probably
20 all be insiders. And so it's not inappropriate at all, in
21 my view, to have a stalking horse for an asset this
22 complicated who is an insider.

23 The committee's concern with the bidding
24 procedures at the last hearing was not that it gave an
25 advantage to CrossHarbor as an insider. The committee's

1 concern was that it was being considered in a vacuum
2 without the ability to consider what the debtor -- the
3 complexities of what the debtor proposed in terms of its
4 plan. And since then, the debtor has proposed a plan and
5 an awful lot of people have worked really hard to
6 understand the plan and to integrate the bidding procedures
7 with the plan.

8 And then in, in my view, I believe, and the
9 committee's view, then, the question is: Can the bidding
10 procedures be made transparent and made to work so that
11 there can be bidding and so that there can be confirmation?

12 If this were a disclosure statement hearing
13 today, Your Honor, I would expect a fair amount of
14 conversation about the adequacy of information and I would
15 expect an enormous amount of conversation about "this is
16 not a confirmable plan". Your Honor, this is a confirmable
17 plan. This plan can be confirmed. And I will state it as
18 simply as I can.

19 If at the confirmation hearing Your Honor hears
20 that there is bidding - Mr. Blixseth wants to bid, Credit
21 Suisse should be by then in a position to bid, CrossHarbor
22 wants to bid, there are rumors of other people who want to
23 bid, there is a broker who's pitching it who can find other
24 people who want to bid - if there is bidding and three or
25 four people bid up until they all drop out but one, then

1 the market will have cleared and that will be a confirmable
2 plan.

3 It will also provide the opportunity -- because
4 consensus occurs when a case is on a trajectory. Consensus
5 doesn't occur when the case is upended, and consensus
6 doesn't occur when the deadline is tomorrow. But what's
7 proposed by this plan and this disclosure is: Get to the
8 end of April - that's plenty of time for consensus to
9 appear - and have bidding.

10 I don't want to be quoted, but I think it's very
11 likely -- if at the confirmation hearing we all stand up
12 and say, "Well, CrossHarbor showed up and bid, and nobody
13 else did, and they're all complaining because they weren't
14 allowed to," then that will not be a confirmable plan. But
15 this plan can be confirmed. And the secret is the sale and
16 bidding procedures. That's the core of it: Does it allow
17 other people to come in?

18 And I'm sure you're going to hear, when the time
19 is right, Credit Suisse or Mr. Blixseth or whoever else
20 will say, "We're not going to bid under these protocols.
21 We want to control our own process." Of course they do.
22 And they will bid under these protocols if they're the only
23 ones that are available. And the debtor within the
24 exclusivity period did what it was supposed to do, which is
25 negotiate with everyone possible and file a plan which the

1 DIP requires be acceptable to CrossHarbor. That's what we
2 have.

3 And I believe, and I believe the committee
4 believes, that we have got to give that a shot, and we've
5 got to put that out for creditors to decide, and we've got
6 to get to a confirmation hearing where I expect a whole
7 bunch of people will have bid and there will be a plan that
8 can be confirmed.

9 But if the sale and bidding procedures are the
10 core, then the examiner is probably the answer. And the
11 examiner can participate, and Your Honor can decide how
12 much he participates or she participates. At some point in
13 the negotiation of the sale and bidding procedures, Credit
14 Suisse proposed that the examiner supplant the debtor and
15 the committees in deciding who is a qualifying bidder and
16 deciding which was the superior bid. And that's not
17 appropriate. I mean this is not the time to bring in
18 somebody brand-new to make that decision.

19 I suggested last time, Your Honor, that I -- and
20 maybe I should be sworn. Being in Los Angeles on Thursday,
21 working with these guys closely for the last two weeks, I
22 believe that Edra Blixseth is an enormous repository of
23 historical information and she understands how the club is
24 being operated today. I believe, Your Honor, that the
25 business decisions with respect to the bidding procedures

1 and the effectuation of a Chapter 11 plan is Mr. Greenspan.
2 And Mr. Greenspan is doing that as a fiduciary, as he
3 should, and he has not under the control of CrossHarbor.
4 The examiner should not supplant the debtor, should not
5 supplant the committees, but the examiner can be there in
6 the capacity Your Honor chooses to participate in the sales
7 and marketing process and to participate in the choosing of
8 the best bid, the qualifying bidders and the best bid.

9 And I'm very hopeful that leads to bidding, that
10 clears the market, that resolves the objections. It
11 doesn't matter if CrossHarbor has whatever relationships it
12 has had with the debtor. Everyone knows it has. The
13 question is: Does that keep other people from bidding?
14 And if it doesn't, it works, and the plan can be confirmed.

15 THE COURT: Mr. Beckett, there was comment made
16 by Mr. Chehi that, in fact, they would be - and I may be
17 misstating this; I hope I am - that they would be precluded
18 from credit bidding at the time of sale. Is that your
19 understanding, as well?

20 MR. BECKETT: Well, that puts me on the spot
21 because I don't think that's a condition of the plan. I
22 think that's an allegation and relief sought by the
23 committee's complaint against Credit Suisse. The
24 committee's complaint says this is a loan program.
25 Promontory; Tamarack is closing today, that's another one -

1 (inaudible) - Yellowstone. There are many of these, and
2 they have, in the committee's allegation, caused great
3 damage to creditors. And that puts the Credit Suisse lien
4 in dispute. When your lien is in bona fide dispute, I
5 honestly don't know how a credit -- how a secured creditor
6 credit bids.

7 But I do know this -- and let's just keep this
8 between us; I don't want Credit Suisse to hear this --

9 THE COURT: And they're all ears.

10 MR. BECKETT: I think it's on the record. I
11 think one of the first things I said in this case was that
12 you want a horse race. And you need a couple of things:
13 You need a track, we have a track; you need a couple of
14 horses, and you need more than one.

15 We have CrossHarbor and we have Mr. Blixseth,
16 that's two horses. The committee would very much like to
17 see a third horse. Credit Suisse knows this asset as well
18 as anybody. Credit Suisse would make a great horse, and it
19 would help the horse race.

20 THE COURT: So what you're saying is we need to
21 resolve all of the adversaries before April?

22 MR. BECKETT: We know that, and we've agreed to a
23 scheduling order that will accomplish that.

24 THE COURT: Okay.

25 MR. BECKETT: And when we get to that at the end

1 of these, I will ask the Court for help. I think ADR has a
2 very important role because I want Credit Suisse to bid
3 because I like three horses better than two, I like four
4 horses better than three. But we have to talk first,
5 because there are issues with the Credit Suisse lien. And
6 we can get there.

7 THE COURT: Arguably.

8 MR. BECKETT: Oh, Your Honor, I have issues with
9 the Credit Suisse. You do not yet, no. I apologize.
10 That's right.

11 Now, the question has been raised with respect to
12 the termination of exclusivity. And that's a tough call.
13 And I think the committees would naturally say, "You know,
14 we like the horse race, and competing plans are a good way
15 to have a horse race."

16 The problem is time. And time is not on our
17 side. Time is not our friend. The DIP runs out at the end
18 of April. I heard this morning that CrossHarbor will
19 extend it to May. We have to have a conversation with
20 Credit Suisse about that. Because this plan is on a
21 trajectory to be confirmed by the end of April. If
22 exclusivity is opened up, we've got a bunch of different
23 plans and not one of them gets confirmed before the end of
24 April. And that means another DIP fight, and that means
25 staking out positions and fighting each other, and the burn

1 rate in this case is ungodly. The committee would prefer
2 to avoid that. It's expensive.

3 In June, Your Honor, that's the time when the
4 budget goes up preparing for the golf season. That's the
5 time when a lot of men and women go up there and bang nails
6 and work. There's a lot of labor in the vicinity that
7 depends on some certainty by June that they can get their
8 jobs back and go back to work up there. I'm afraid that
9 the competing-plan idea pushes this into the summer and
10 into the fall. I believe that the current trajectory with
11 the debtors' plan can get us out early. I believe it keeps
12 the pressure up, which improves the opportunity to find a
13 consensual plan that Mr. Chehi wants, that I want, that
14 Mr. Patten wants, that everybody wants. And the
15 committee's view is, for those reasons: Stay the course.

16 I'd be happy to address any other issues or
17 answer your questions.

18 THE COURT: Thank you, Mr. Beckett.

19 MR. BECKETT: Thank you, sir.

20 THE COURT: Mr. Alter. I realize this is a
21 little broader than just the motion on protection, but as I
22 said, I'm trying to get a global picture of this thing
23 because many of these things are impacted by my global
24 impression of where things are at.

25 MR. ALTER: Thank you, Your Honor, and thank you

1 for this opportunity to address the Court. I will try to
2 be brief. And I second virtually, I think, everything if
3 not everything that was said by the creditors committee.

4 Your Honor, the member group supports the
5 immediate commencement of the sales process in accordance
6 with the sales procedures order. And it's the member
7 group's position that it's critical to understand the
8 impact that any delay to an aggressive sales process has to
9 parties in interest and, as Credit Suisse likes to say, to
10 legitimate creditors.

11 Your Honor, it's our position that even a few
12 months of a slowdown of the sales effort would be
13 devastating for the local community which is so dependent
14 upon the Yellowstone Club for construction, for services,
15 for furnishing, for management, and a host of various
16 service jobs. Missing or reducing the summer season would
17 undoubtedly destroy most of the construction work for this
18 season. That was touched upon by Mr. Beckett, and we very
19 much second his sentiment. This would impact, in our
20 opinion, hundreds, if not more, of construction workers and
21 material suppliers, plus the architects, designers, and
22 landscapers that work in the summer season for the
23 Yellowstone Club. In this economy, Your Honor, the
24 businesses are already struggling. That result would be,
25 frankly, catastrophic.

1 From what we hear, the employees are all anxious
2 at the club and concerned as to whether they will have jobs
3 this summer let alone this fall. Without work from the
4 Yellowstone Club, these families are faced with a very
5 difficult situation as there is not an abundance of jobs
6 elsewhere in the community. So they all watch these cases,
7 and they wait.

8 Your Honor, Tim Foote, a Yellowstone Club
9 employee who grew up in Bozeman is in the courtroom today.
10 He's in the back and the left.

11 Tim, if you could just wave to the Court.

12 Tim was a ski and fishing guide when the land
13 that the Yellowstone Club sits on was first being
14 considered for development. He was first involved with a
15 local construction company involved with the, with the
16 club, as well. For the last six years, Your Honor, Tim has
17 been a Yellowstone Club salesman. He knows the community,
18 he's worked on the area, and he understands the impact on
19 the area. And, of course, his biggest frustration has been
20 with any sales prospects for the club that will not even
21 consider purchasing a lot at the Yellowstone Club in the
22 midst of these proceedings which are generally viewed as
23 especially contentious.

24 New members provide Mr. Foote with a commission,
25 of course, but a land purchase also provides funds for the

1 Yellowstone Club, it also provides membership deposits for
2 the Yellowstone Club. Eventual construction projects
3 employ dozens of local workers. The cash flow that it
4 generates impacts the community in countless other ways.

5 The value of the Yellowstone Club Your Honor, is
6 declining. There is no doubt that it is declining as this
7 bankruptcy continues to proceed. We have negative press,
8 we have a lack of any degree of sales, we have the members
9 expressing concern and great frustration as to the
10 contentiousness and the length of these proceedings, we
11 have a loss of key employees, we have a deterioration of
12 community support, and we have large incurrence of
13 bankruptcy fees plus the lost time value of money.

14 Your Honor, we need to move these cases forward
15 consensually, if possible; but consensually is not
16 happening at this point in time. The level of
17 contentiousness is virtually unprecedented, and for that,
18 the members, the employees, the local community in Big Sky
19 are all concerned. Your Honor, it's time to proceed with a
20 sales procedure and for the sales bidding procedure order
21 to enter to preserve value and to protect the creditors and
22 to protect the local community.

23 And that's the position of the members. Thank
24 you, Judge.

25 THE COURT: Thank you, Mr. Alter.

1 MR. GEARIN: Your Honor, if I could be heard.

2 THE COURT: Certainly.

3 MR. GEARIN: Michael Gearin, Your Honor, of K&L
4 Gates for Mr. Blixseth.

5 THE COURT: Okay.

6 MR. GEARIN: Mr. Blixseth, as you know, has
7 expressed an interest on a number of occasions in
8 participating in these proceedings both either as a plan
9 proponent or as a bidder for the assets. Mr. Blixseth, as
10 the founder of the club, still has a very continued
11 interest in the affairs of the club, has concerns about the
12 way the trade creditors have been treated, and has
13 consistently expressed an interest in trying to protect
14 those people and get them paid. So the comments I've heard
15 about construction people, I can tell you Mr. Blixseth is
16 very interested in finding ways to satisfy those creditors'
17 concerns and to get them paid.

18 We have reached out in the last couple of weeks
19 to all of the major constituents in the case. We've spoken
20 with the debtors' representatives, we had conversations
21 with Credit Suisse bank. We've tried to open up some
22 conversations with them and invited them to attend some
23 meetings so we can try to reach consensus with them at what
24 a potential plan might look like that Mr. Blixseth would
25 propose. We've spoken with representatives of the

1 unsecured creditors committee, we've spoken with
2 representatives of the Class B shareholders.

3 We believe there is an option, a possibility of
4 reaching a consensual plan with all of those parties which
5 might be sponsored by Mr. Blixseth. It will take some time
6 to get there - there's no question about that - but I will
7 tell you that the plan that's being proposed presently
8 creates some serious advantages for CrossHarbor. There
9 are, buried in the plan and in the plan solicitation
10 materials, provisions that, for example, assume all of
11 CrossHarbor's membership agreements. Those membership
12 agreements contain deferred deposit agreements. They total
13 about \$25 million. If those agreements are assumed,
14 there's a \$25 million advantage built into the plan for
15 CrossHarbor, based upon that assumption.

16 In addition, the plan solicitation procedures
17 propose that CrossHarbor will be allowed to contribute some
18 of its property to the debtors' enterprise, 31 golf course
19 lots; and any competing creditor has to come in and provide
20 either \$15 million in cash or \$25 million of additional
21 property in order to compete with CrossHarbor's bid.

22 There's a \$3.5 million overbid protection. The
23 initial overbid is \$3.5 million, and there's
24 \$2 million-plus -- let's call it at this point at least a
25 \$3 million break-up fee.

1 So if you total all that up, it's around \$55
2 million or \$56 million of advantage that CrossHarbor
3 achieves by having the plan confirmed and then having the
4 auction take place later. That may be a death blow to any
5 competing offer, to any other party's ability to
6 participate in the proceedings meaningfully.

7 So I do think that terminating exclusivity would
8 be important and the Court should consider that very
9 carefully in determining whether there could be any
10 competing bids that will be viable going forward other than
11 a fight with Credit Suisse about whether it gets the credit
12 bid during the procedures.

13 And if you do confirm this CrossHarbor plan, Your
14 Honor, I will point out that this is a future litigation
15 plan. This is a plan that means fighting with Credit
16 Suisse, with the Blixseths, with Edra Blixseth's ownership
17 group for years. If we're going to fight about it, it
18 seems to me we can resolve some of those things. We will
19 have an opportunity to create meaningful consensus if
20 you terminate exclusivity, and I would encourage you to do
21 that.

22 THE COURT: Thank you. Mr. Patten.

23 MR. PATTEN: Your Honor, the Paragraph 5(m) of
24 the proposed order deals with a credit bid for -- from
25 Credit Suisse. And what it does is it leaves that issue up

1 in the air. It provides that: If Credit Suisse is allowed
2 a credit bid or if it is not allowed a credit bid.

3 So the proposed order doesn't preclude a credit
4 bid but simply defers for decision by this Court whether
5 one is allowed or not.

6 In response to Mr. Gearin's comments, the first
7 proposed order that this Court rejected had language that
8 involved the contribution of golf course lots or, for
9 another bidder, some comparable property which would be as
10 additional collateral for the notes that will be springing
11 from this. And it was our view that having additional
12 collateral would be advantageous for Credit Suisse. In
13 view of everyone's complaints about having additional
14 collateral, that's been removed from the proposed order
15 that's before the Court right now. So there's no required
16 contribution of any kind of additional property as part of
17 this.

18 THE COURT: Okay, thank you.

19 MR. ALTER: Your Honor, if I might, I just wanted
20 to add one thing for the record.

21 THE COURT: Mr. Alter.

22 MR. ALTER: It's a statement that's not a
23 statement, so let me explain it, Your Honor. I just don't
24 want to be perceived as not having spoken to the potential
25 of Mr. Blixseth coming in and what the members' position is

1 with respect to Mr. Blixseth.

2 We will wait until Mr. Blixseth actually makes a
3 firm proposal before the members respond, though I will
4 state that the members definitely have significant concerns
5 regarding any such proposal. And no one has reached out to
6 me as counsel for the member group at all from
7 Mr. Blixseth's camp. But to the extent that there is a
8 position that's staked out by Mr. Blixseth to play a
9 continuing role, believe me, you will hear from the
10 members, Your Honor. Thank you.

11 THE COURT: Mr. Chehi.

12 MR. CHEHI: I'm not sure whether -- are we
13 arguing the bidding procedures now that were supposed to be
14 adjourned until --

15 THE COURT: No, no.

16 MR. CHEHI: Okay, good. Well, then I'm just
17 going to make one legal point, that: Don't let anybody kid
18 you, Your Honor. There's no opportunity for Credit Suisse
19 to credit bid under the bidding procedures in the proposed
20 plan because it involves not a sale of assets, not a sale
21 of our collateral, but a sale of equity of the reorganized
22 company. Section 363 of the code does not give a secured
23 lender the right to credit bid on the equity of the
24 reorganized company.

25 So however they want to gussy up their bidding

1 procedures to make it seem like this is not been decided
2 and there's going to be an opportunity to credit bid,
3 there's not going to be credit bidding, and it's not going
4 to be permitted as a matter of law under these
5 configuration of bidding procedures which only allows one
6 transaction outcome, the transaction outcome of sale of
7 equity in the reorganized company with CrossHarbor as the
8 stalking-horse bidder. And we'll go back to the merits of
9 that procedure when the time comes today.

10 But, again, I would like to move the Court back
11 to the matter that is pending, the discovery motion, and
12 let's put on some of our documents to give the Court a
13 flavor of what's in the record, the slim record that has
14 been provided, and see whether that raises any questions.
15 Maybe the Court will think it's all okay, but we don't
16 think so.

17 THE COURT: Thank you, Mr. Chehi.

18 MR. PATTEN: One comment, Your Honor, and I
19 promise I'll sit down.

20 The flip side of the credit bid in a 363 sale is
21 Credit Suisse's 1111(b) rights. In an equity sale, they
22 have 1111(b) rights. All they've got to do is exercise
23 them; accomplish the same thing.

24 THE COURT: When we get to the professional --
25 and, actually, you raise a good point regarding the

1 application for, I'm going to just say "Ellis" without
2 looking at the full title. Obviously, the application said
3 one thing and the agreement says another thing as it
4 relates to land, property, buildings versus equity
5 interests. I have a problem with that divergence because I
6 was kind of headed down the -- thinking from the last
7 hearing that it was more hard assets rather than an equity
8 interest.

9 Now, I realize the documents were there and I'm
10 sure there was some discussion about it, but for some
11 reason, I had in my mind hard assets.

12 MR. PATTEN: You're referring to the CBRE, Your
13 Honor?

14 THE COURT: Yes.

15 MR. PATTEN: I'm sorry. Well, if there's
16 confusion in the application, then it's my fault, and I'll
17 take responsibility for it. But the intent --

18 THE COURT: I know you would.

19 MR. PATTEN: The intent all along, Your Honor,
20 has been to sell the equity, because we think that's the
21 only way that we can keep the memberships, which are a
22 vital component to this thing, married to the assets.

23 THE COURT: Yes, I understand.

24 MR. PATTEN: And we think that enhances the
25 value.

1 THE COURT: I understand, I understand.

2 MR. CHEHI: And, Your Honor, the last point I'm
3 going to make on it is that that procedure, that "we think"
4 business is properly subjected and must necessarily be
5 subjected to heightened scrutiny. Because you're dealing
6 with insiders, insider transactions right and left. And
7 what their business judgment is about the right way to go
8 doesn't insulate their view of what the right process
9 should be, what the right plan should be because it's an
10 insider-driven, an insider-benefitting plan.

11 And the reason that it's set up as an equity sale
12 process is because they don't want to give us their rights
13 to credit bid because they know that would be -- give us
14 too much power over the sale process. It would not
15 allow -- it would allow us to credit bid the amount of our
16 claim. Now, they can dispute our claim, etc., etc., but if
17 our claims are allowed and we have valid liens, we can
18 credit bid up to \$310 million for those assets, and there's
19 no one sitting in this section of the courtroom that is
20 talking about putting up anywhere near \$300 million. And
21 they're looking to deny us the right to do that. And that
22 is why it's structured the way it is.

23 THE COURT: Well, I guess I would, just on that
24 factor alone, comment. Anything that I view as intentional
25 to prevent some type of credit bid or bidding by Credit

1 Suisse is going to be highly scrutinized. And so we can
2 take that up a little bit later with the bidding process.
3 But I'm quite concerned about any effort, if there is that
4 -- an intended effort to affect that ability.

5 So having said that, regarding the productive
6 order, I think you all know my position on these types of
7 matters. I think there's a better way to handle matters
8 like this than to go tooth and nail as I've been seeing in
9 this whole process, starting with the emergency calls for
10 the last two weeks. And I think that both sides, if there
11 are two sides; both sides, if there are not more than two
12 sides, should, given the professional firepower that's in
13 this room, get this type of thing worked out. I just don't
14 understand the contentious nature over this. It should be
15 dealt with. You're professionals, and it should be handled
16 without this Court having to dictate what is and isn't
17 produced. I think that, that's why you're professionals.
18 But sometimes that breaks down for whatever reasons, and it
19 doesn't get done.

20 Obviously, there's been production of a lot of
21 documents, a lot of pages. Some have taken a long time to
22 review through it; others, apparently, have done it in a
23 day or two, at least as to what's been produced.
24 Obviously, it's very difficult for a party requesting it to
25 know what's out there if they don't get it. And it seem as

1 little unnecessary to be producing 35,000 documents or
2 whatever the document number is, but if we're going to get
3 to transparency and that there's nothing out there that is
4 tainting this process, then we're going to need the
5 documents.

6 And I'll be quite honest, the cost of this thing
7 is abhorrent to me. And, obviously, for those that are
8 going to want to get paid by the estate, I'm going to see
9 fee applications. If there's duplication at all -- I mean
10 when I see three and five attorneys every hearing when
11 everyone is skilled in their own right, it bothers me. We
12 have so many attorneys. And is it just duplication? Do we
13 need, do we need so many people?

14 Now, when you're producing 35,000 documents and
15 reviewing that many, obviously there's a lot of people that
16 are involved in trying to sort through all of that.

17 But even given what I view as certainly a burden
18 and a cost, so that we resolve these issues and we get on
19 with the matters at hand, which is a bidding and
20 solicitation process and a confirmation of a plan that
21 works and that maximizes the assets - which I think should
22 be, if it isn't, everyone's goal - I'm going to direct by
23 order that all documents be produced that have been
24 requested.

25 Certainly, the non-privileged documents -- and I

1 guess looking at, from the standpoint of the documents, the
2 grouping of documents, if there's just an attorney's name
3 in it that was copied and that has thrown it into a
4 privileged pool, then I think it needs to be looked at -
5 because it may not be privileged - and pulled out. I want
6 that log prepared, and I want these discovery disputes to
7 end. I want to get on with the real substance of this
8 matter.

9 And I realize you're all saying, "Well, we need
10 it because it will show that there's some bad thing going
11 on." It may or it may not. And I know Mr. Chehi feels
12 strongly that it will show some things that would impact
13 confirmation of this process.

14 So I'm going to direct that they be produced
15 subject to any agreement between the parties as to how --
16 you know, how do I want to say this -- I'm going to order
17 they be produced unless the parties agree otherwise as to
18 selected documents and selected generation of documents.
19 And if there can't be resolution, produce them all.

20 Now, I'm not leaving that in there so that one
21 party can just say, "Oh, I'm not doing it," or, "I want
22 everything." I expect realistic, reasonable agreement on
23 this stuff. And if it becomes -- if there are continuing
24 problems, I'll deal with that in a subsequent motion,
25 either for production or for sanctions, if it appears we've

1 got a problem.

2 Now, I know Mr. Moore is going: What are you
3 doing to us here? We've got to put in \$1 million for these
4 documents.

5 I'm very concerned about that, and I appreciate
6 your position. Given the number of documents, certainly,
7 that was testified to earlier, I would ask that they be
8 provided as promptly and as quickly as possible, and let's
9 get this behind us.

10 Mr. Moore, you may have some comment.

11 MR. MOORE: Your Honor, I think, as you noted at
12 the prior hearing, we wouldn't be here today if we hadn't
13 stepped into the lurch and provided a DIP loan.

14 THE COURT: That's all part of the record,
15 certainly.

16 MR. MOORE: I understand.

17 THE COURT: And I understand that.

18 MR. MOORE: And that started the process, Your
19 Honor. And we have an ongoing appeal on the DIP loan. If
20 these costs are going to be reimbursed, that's one thing;
21 if they're not going to be reimbursed, then I think there's
22 a solution.

23 And I don't mean to threaten anyone, but if there
24 are no bid procedures, no reimbursement of these expenses,
25 you know, it becomes moot if we are not involved in the

1 process.

2 THE COURT: I understand.

3 MR. MOORE: Which is something I'll have to talk
4 to my client about.

5 THE COURT: I understand. We'll issue an order
6 on that.

7 MR. CHEHI: Thank you, Your Honor.

8 THE COURT: And I expect if there are minor
9 skirmishes, that they be worked out. I will entertain,
10 though, however, any motions that come up on this matter
11 either by CrossHarbor or by Credit Suisse, and I'll deal
12 with them promptly.

13 I know you want to wait a bit for the fellow to
14 appear from the professional group. Should we take up
15 the -- it seems like all that's kind of bidding-related.
16 Should we take up the TRO in the Adversary Case 09-010,
17 official creditors committee of unsecured creditors motion
18 for expedited hearing on motion for temporary restraining
19 order.

20 Mr. Cossitt.

21 MR. COSSITT: Thank you, Your Honor. Jim Cossitt
22 appearing on behalf of the creditors committee.

23 Formally, I guess I would like to begin with
24 moving for admission of the exhibits which are at
25 Docket No. 18. That's Exhibits 1 through 7.

1 I'd secondarily note that --

2 THE COURT: Any objection on that? Without
3 objection, they're admitted.

4 MR. COSSITT: Thank you.

5 EXHIBITS 1 - 7 ADMITTED INTO EVIDENCE.

6 MR. COSSITT: Secondarily, I'd note that there
7 still has been no response by any of the defendants, no
8 formal response.

9 Informally, I have been in touch with a lawyer in
10 Los Angeles who is apparently advising Ms. Blixseth and the
11 other defendant, the BLX Group, informally. And as I've
12 been sitting in the courtroom, actually, I hate to admit
13 it, I've been sitting in the courtroom logged in and
14 working this out, but I've been generating more e-mail in
15 the process. But I'm not using a BlackBerry, Judge; I'm
16 actually using a laptop.

17 THE COURT: Be prepared to produce them.

18 MR. COSSITT: In any event, the lawyer in Los
19 Angeles actually indicated that Ms. Blixseth had consented
20 to a stipulation which I had circulated yesterday. I
21 haven't had an opportunity to confirm that with
22 Ms. Blixseth yet, but I guess she's available by video.
23 And the good news is I think I've got one matter on your
24 docket resolved.

25 THE COURT: Okay, very good. Did you want to

1 confirm that with -- Ms. Blixseth, are you aware that there
2 has been a resolution regarding the temporary restraining
3 order in the preliminary injunction?

4 MS. BLIXSETH: Absolutely. And I totally agreed
5 with it. And they needed confirmation since my lawyer is
6 more of an advisor than my official lawyer, so I sent an
7 e-mail confirming that I did accept the TRO -- (inaudible,
8 audio cuts out.)

9 MR. COSSITT: If the Court would give me a couple
10 days, I'll just submit the written document.

11 THE COURT: I'll give you a couple of days --

12 MR. COSSITT: Okay.

13 THE COURT: -- to obtain necessary document
14 finalization and a signature.

15 MR. COSSITT: Okay.

16 THE COURT: And we'll approve it.

17 MR. COSSITT: Okay. And, Judge, we're also going
18 to extend the answer date for about two weeks on this. Do
19 you want me to file a little notice or some such thing to
20 that effect?

21 THE COURT: There absolutely should be something
22 in the record.

23 MR. COSSITT: Okay, will do. Thank you.

24 THE COURT: Okay. 09-014, Credit Suisse vs.
25 Official Committee of Unsecured Creditors, which has also

1 been consolidated with the Official Committee of Unsecured
2 Creditors vs. Credit Suisse, I believe; pretrial scheduling
3 conference.

4 And as I understand from previous comments, there
5 may be a resolution or at least -- not a resolution, but a
6 proposal.

7 MR. CHEHI: Mr. Zimmerman will address it for
8 Credit Suisse.

9 THE COURT: Okay, thank you. Mr. Zimmerman.

10 MR. ZIMMERMAN: Yes. We have, in fact, come up
11 with an agreement with the committee on a pretrial
12 schedule --

13 THE COURT: Okay.

14 MR. ZIMMERMAN: -- that hopefully will permit
15 everything to be done in preparation for a trial that's
16 subject to Your Honor's availability. We would anticipate
17 starting April 22nd in the morning. And I think we would
18 have a pretrial stip ready to be filed by Monday or Tuesday
19 to that effect.

20 UNIDENTIFIED SPEAKER: Agreed.

21 THE COURT: How long do you think that will take?

22 MR. ZIMMERMAN: Four to five days, that sounds
23 about right.

24 THE COURT: What's everyone's pleasure, then, as
25 it relates to trying to get to confirmation? I realize

1 it's unrelated, but are we still looking at a confirmation
2 date at the end of April?

3 Mr. Patten.

4 MR. PATTEN: As far as I know right now, we are,
5 Your Honor.

6 THE COURT: Okay. So we've got a five-day trial
7 that will lead right into confirmation hearing? Is that
8 kind of what I'm hearing?

9 MR. PATTEN: Plus, Your Honor, we'll be having --
10 if you approve our procedures order, we'll be having an
11 auction in the middle of this, as well.

12 THE COURT: Right, okay. Does that impact --
13 does the trial and the adversary have direct impact on
14 confirmation and the sale?

15 MR. CHEHI: Your Honor, the answer from the
16 bankruptcy law point of view is "abundantly, yes". The
17 issue of our claims and our liens and the values associated
18 with them are huge. They're the largest claims in the
19 cases. They may say that they have a confirmable plan, but
20 as set forth in our papers, there are numerous reasons why
21 it's not confirmable. I haven't had the benefit of reading
22 what was filed midnight last night and maybe they've
23 changed some things, but in general, whatever treatment
24 that they're proposing for us, assuming the world turns out
25 in their view the way they want it to be, it is still

1 non-confirmable under the bankruptcy code.

2 And I'll suggest that we -- you know, those
3 issues should be joined in connection with the disclosure
4 statement hearing because there's no reason for these
5 debtors to go marching down the road spending a lot of
6 money on a non-confirmable plan and soliciting acceptances
7 and running whatever type of auction is going to be run if
8 at the end of the day the plan can't be confirmed. And
9 that's -- I think we'll leave that for the disclosure
10 statement hearing if Your Honor wants to take up
11 confirmation issues then, but the professionals and the
12 debtors, you know, move forward at a great risk, really, to
13 the estate if at the end of the day there are solid reasons
14 why the plan is not confirmable under -- because of the
15 treatment and outcome of the adversary litigation resolving
16 elements of our claims or for other bankruptcy
17 garden-variety confirmation issues.

18 THE COURT: Mr. Patten.

19 MR. PATTEN: Your Honor, the Ninth Circuit has
20 ruled that it's perfectly appropriate for the market to
21 determine the value as opposed to appraisers battling over
22 the value. And if this Court adopts the proposed bidding
23 and solicitation procedures order, then we're going down a
24 path of the market being the determiner of the value and
25 not the appraisers. It would make no sense, if that's the

1 route we're taking, to have a separate path where we're
2 having the appraisers battle out what the value is because
3 it's redundant and I think mutually exclusive of having the
4 market determine the value.

5 Now, the litigation can certainly determine the
6 merits of the official committee's claims against Credit
7 Suisse, and so forth, but if the Court is going to proceed
8 with the fundamental structure of the proposed plan, which
9 is to expose the property to the market and let the market
10 determine what that value is, then there is no reason to
11 separately conduct valuation proceedings in an adversary or
12 otherwise.

13 THE COURT: Thank you, Mr. Patten. So given your
14 proposal on, on scheduling, that's the soonest that you
15 would be able to deal with trial, the 22nd?

16 MR. BECKETT: For the committee, I would say that
17 there may be some flexibility, but it's not much more than
18 a couple of weeks. And there may also be dispositive
19 motions that can be filed.

20 And I can speak for my half of it: We will do
21 everything we can to isolate issues and simplify issues so
22 at the end of the day, it is as streamlined as possible.
23 And when we get there, I also want to discuss the ADR
24 because, as I intimated a moment ago, I think that a lot of
25 this should be resolved.

1 THE COURT: Okay. Mr. Zimmerman.

2 MR. ZIMMERMAN: Your Honor, Credit Suisse was the
3 one who moved to expedite this precisely because of this
4 problem. We will move as quickly as you want us to move.

5 THE COURT: Okay. Well, I guess it's kind of
6 difficult for me to see what your other timing is in
7 relation to, well, submission of exhibits, witness lists,
8 pretrial order. I'm assuming you've got that covered in
9 there --

10 MR. ZIMMERMAN: Yes.

11 THE COURT: -- leading up to the trial. And I'm
12 just thinking it may be better if we can try to push that
13 up, but --

14 MR. ZIMMERMAN: If it helps, Mr. Beckett has
15 outlined a little chart with the dates.

16 THE COURT: Okay. You may approach. Thanks.

17 MR. PATTEN: Your Honor?

18 THE COURT: Yes.

19 MR. PATTEN: I think, Your Honor, if the Court
20 addressed the procedures order first and made a ruling on
21 the procedures order, then either some issues could be
22 eliminated that would have to be tried or we may be able to
23 extend the deadline for confirmation which would then open
24 up more time to try this case.

25 THE COURT: Say the first part of that again.

1 MR. PATTEN: If Your Honor approves the bidding
2 and procedures order so that the value is going to be
3 determined via the marketplace, then it seems to me that
4 the issues of value and fixing the amount of claims don't
5 need to be tried in this adversary. Because the claim's
6 going to be fixed by the marketplace -- at least the value
7 of the collateral is going to be fixed by the marketplace.

8 So to the extent that there are valuation issues
9 in the adversary, which I read when I read the complaint
10 and the prayer for relief, then those would not be
11 necessary if the Court adopts the procedural order. I also
12 understand that if the Court adopts the procedure order,
13 then we may be able to move that April 30th date back to
14 the end of May which would then open up another month for
15 everybody to litigate some more.

16 THE COURT: We've had just about enough
17 litigation, in my mind.

18 MR. PATTEN: I agree, Your Honor.

19 MR. ZIMMERMAN: May I just briefly -- having
20 drafted the complaint, we don't have a valuation -- you can
21 value it -- whatever properties have to be valued, you can
22 value it any way you want to, Judge, and it's not part of
23 the litigation.

24 The litigation is fundamentally seeking to
25 resolve two issues. The plan on the table renders us,

1 Credit Suisse, an unsecured creditor for the vast majority
2 of its claim, and it subordinates its claims, and it strips
3 us of its liens. That's what the litigation is about. The
4 liens were valid, from our perspective; we have a fully
5 secured claim; and we have an allowed claim -- or an
6 allowable claim. Forgive me, I'm a litigator, not a
7 bankruptcy person.

8 Valuation is a separate issue, and I don't see
9 how valuation of collateral -- that's a separate process
10 outside of this litigation, so that's not really part of
11 this.

12 MR. CHEHI: If I can just clarify that, Your
13 Honor.

14 THE COURT: Mr. Chehi.

15 MR. CHEHI: The adversary complaint goes to
16 allowance of our claims, a dollar amount; it goes to the
17 priority, if you want to call it that, of those claims to
18 the extent that there has been an allegation that they
19 could be subject to equitable subordination. So there's a
20 declaratory judgment saying: Not subject to equitable
21 subordination. So you get a dollar amount of a claim. And
22 the liens, the validity and extent of the liens are being
23 determined in the adversary proceeding.

24 It doesn't have anything to do with the value of
25 the property that's subject to the lien. That's, that's

1 the subject matter, actually, of our motion that we brought
2 on that's, you know, set for hearing today.

3 THE COURT: That's set for today.

4 MR. CHEHI: You know, a valuation there. And in
5 responding to Mr. Patten just one step further, because to
6 the extent he misunderstands the purpose of the adversary,
7 he also is sort of confusing the valuation that will be
8 taking place if their procedures were to be approved by the
9 Court, which we don't think they should be -- that's going
10 to be valuing the equity of the reorganized company in a
11 configuration and a capital structure created by a plan of
12 reorganization; it's not a market test of the value of our
13 collateral. Because they're not selling our assets,
14 they're not selling our collateral; they're selling equity
15 in a reorganized entity pursuant to a plan that they've put
16 together for the benefit of CrossHarbor.

17 They want to avoid a sale of the assets because
18 that, of course, would allow us to credit bid. But what
19 we're going to do is have the litigators determine the
20 validity of the liens and the amount of the claim,
21 310 million, more or less; and then, separately - and
22 we think that should happen sooner rather than later
23 because it goes to fundamental issues of whether this plan
24 or any plan is going to be confirmable or feasible - is to
25 determine the value of the collateral securing our claims.

1 In other words, valuing the amount of our secured claims
2 assuming the liens are valid and assuming our claims are
3 allowed and full.

4 The valuation will be without prejudice to
5 whatever the judgment of the Court is on the adversary,
6 outcomes of the liens, and the allowability of the amount.
7 But we're going to get to the issue of value because that's
8 going to speak volumes about whether the plan of
9 reorganization that's being proposed makes any sense
10 whatsoever and whether it can accommodate -- the treatment
11 it proposes for our client can accommodate the outcome that
12 our liens are valid, our claims are allowed, and our
13 collateral is what it is.

14 THE COURT: Okay, thank you.

15 MR. PATTEN: Your Honor, when I read the first
16 paragraph, the prayer for relief in the complaint is that
17 the Court declared Credit Suisse has an allowed secured
18 claim of a particular amount. I don't know how you can
19 determine that it has an allowed secured claim of a
20 particular amount without doing this valuation process.

21 So, again, it's the market -- if you adopt our
22 proposal, it's the market that determines the value, not
23 experts testifying to the Court.

24 THE COURT: Okay, thanks. As it relates to the
25 matter before me on the pretrial scheduling conference, you

1 know, certainly, I don't have a problem with this.

2 I guess just so you know, the 22nd is fine.

3 The afternoon of the 23rd is unavailable, as
4 noted on my order.

5 Let's see, the 24th, I have Great Falls hearings.
6 That was one of the dates that, I think, was excluded.

7 The 27th is -- oops; yes, the 27th is okay.

8 The 28th is okay.

9 The 29th is okay, if we have to go that far.

10 And it's not that we could -- it's possible that
11 we could carry on on the 24th. I just don't know how long
12 the Great Falls hearings are. So we would have to do it,
13 you know, starting probably a date -- a time certain would
14 be, you know, one o'clock. We probably would be done. I
15 haven't looked at that calendar so I don't know what's on
16 the 24th. And because of commitment, I'm going to have to
17 do that in Missoula. I'll have to, because I teach
18 Thursday afternoons. So if you could submit a proposal
19 that way.

20 If I need to tweak it any more, I think what I
21 would do, so that you are aware, I would probably have a
22 quick conference call with Mr. Zimmerman and Mr. Beckett if
23 we need to tweak any of the times as it relates to the
24 trial that you would propose; otherwise, it's pretty much
25 your timing as it relates to the other stuff, so --

1 UNIDENTIFIED SPEAKER: Thank you.

2 THE COURT: Now, regarding a mediation, ADR,
3 settlement, certainly, if you think that that might assist
4 in any way, I will certainly allow you to do so.

5 One alternative is, certainly, depending on
6 availability - and I just don't know, having this issue
7 just come up this morning - but to have Judge Peterson
8 assist in that. Certainly, that would be a possibility.
9 We can confer with him to see what his availability is.
10 And probably, if he's available today, we'll let you know
11 what that might be. I honestly don't know what his
12 schedule might be, so --

13 MR. BECKETT: Thank you, Your Honor. May I
14 address the point for just a second?

15 THE COURT: Yes.

16 MR. BECKETT: I have two thoughts. One is:
17 There are going to be a lot of documents involved, and
18 we're going to be doing it on a very compressed time
19 schedule, and there may be issues that arise. And I felt
20 like I wanted to -- I felt like I wasn't sure what to do.
21 On the one hand, I wanted to protect the Court from any
22 more or too many more emergency gatherings of people; on
23 the other hand, Your Honor has expressed your interest that
24 you want to maintain control of this litigation. So I'm
25 asking the Court for your pleasure and your direction in

1 that regard.

2 THE COURT: As it relates to matters coming up
3 and needing some immediate attention?

4 MR. BECKETT: Yes.

5 THE COURT: Bring it to my attention.

6 MR. BECKETT: Okay.

7 THE COURT: We'll take it up as need be --

8 MR. BECKETT: Okay.

9 THE COURT: -- and as quickly as possible.

10 MR. BECKETT: Thank you very much. And the other
11 issue is: Is it helpful to go to somebody and talk about
12 these issues and try and get them resolved?

13 And it may, it may work into a more global
14 resolution than these issues. I think these issues are
15 fairly core to going forward. If they can be resolved,
16 then maybe some other issues can be resolved, as well. And
17 we can turn to Judge Peterson for that.

18 THE COURT: Yes. If there are no objections, I
19 don't believe he would have any conflicts, but we can
20 certainly confer with him and see.

21 MR. BECKETT: Thank you.

22 THE COURT: It may be that it may be something
23 that would assist in a global resolution. I have seen that
24 occur before.

25 MR. BECKETT: Thank you, I appreciate it.

1 THE COURT: Mr. Patten.

2 MR. PATTEN: Your Honor, just so that I'm clear,
3 are the parties going to submit a scheduling order --

4 THE COURT: Yes.

5 MR. PATTEN: -- or are you adopting the one
6 that's --

7 THE COURT: No, they're going to submit to me a
8 stipulated scheduling order that I will then review. If I
9 still have any problems with the dates they give me, I will
10 confer with the two of them directly and resolve that.

11 MR. PATTEN: Okay. And, Your Honor, we're
12 defendants in this case, too.

13 THE COURT: Well, I would include you, as well.

14 MR. PATTEN: Okay. Thank you, Judge.

15 THE COURT: We don't want anyone left out.

16 Okay. So looking at what I have still -- oh,
17 this would be a good time for Mr. McKay. What's the status
18 of the examiner?

19 MR. MCKAY: Your Honor, we have contacted and
20 interviewed a number of potential candidates for the
21 examiner. We're in a position that we can act very
22 quickly. To be candid with the Court, one of the concerns
23 that has been expressed by almost all of them is the
24 open-ended order. And I think we've gotten the comment
25 that that both puts them -- conflicts them out of the case,

1 essentially, while they sit and wait; and, secondly, that
2 without knowing the duties, they would not know what
3 resources they need to muster, and so forth.

4 But in discussing the case with them and the
5 issues and, I guess, maybe anticipating where the Court may
6 be headed with the order, that we certainly have very
7 qualified and interested people that I think could act very
8 quickly. Several of them have already done conflicts
9 checks and indicated that they don't feel there are any
10 conflicts. So I would think, depending on the Court's
11 order, that we could have a proposed order for the Court by
12 the end of this week or the middle of next week.

13 THE COURT: Okay.

14 MR. MCKAY: I guess my comments with regard to
15 the examiner is: I believe that -- I guess I can't imagine
16 the Court simply assigning duties that were requested in
17 the original Credit Suisse examiner motion simply to look
18 at the CrossHarbor relationship and make some type of
19 report to the Court with the Credit Suisse discovery
20 ongoing in that regard and as central to their position in
21 the case as that is.

22 And, also, recognizing that we have moved to
23 appoint a trustee, the duties that the Court may determine
24 to assign to the examiner obviously would have, I would
25 assume, a large impact on whether the Court would be

1 inclined to grant the trustee motion or not if it felt that
2 the examiner had duties sufficient to essentially take that
3 issue off the table.

4 So with that having been said, Your Honor, we are
5 ready to act quickly with regard to the appointment. I
6 would like to be able to have input with regard to,
7 perhaps, a supplemental order regarding the appointment or
8 the Court's order approving the appointment, because there
9 are several things that we like to see if an examiner order
10 with regard to the examiner's ability to hire professionals
11 since there's sort of a gap in Section 327 and 330 with
12 regard to employment by the examiner of professionals. And
13 so there's some language we would at least suggest to the
14 Court with regard to several things like that, but I'm sure
15 we can work that out.

16 THE COURT: Okay.

17 MR. McKAY: Thank you, Your Honor.

18 THE COURT: Yes, I would seek your review on any
19 proposed order. I think that would be best.

20 Obviously, the feeling I had in going forward
21 with this is that the examiner would be somewhat limited in
22 focus so that we weren't just opening the whole thing up.

23 MR. McKAY: Well, Your Honor, in listening to all
24 of the comments today, perhaps some examination or getting
25 together with all of the parties and assessing -- we hear a

1 lot of talk about alternative plans and who may propose
2 this and that. An examiner may be able to at least talk to
3 people, find out what they're thinking, and provide some
4 input as to whether there are -- not only the examiner's
5 view of the current proposal, but perhaps a view on
6 whatever alternatives there may be out there and whether
7 there are some potentially good alternatives.

8 THE COURT: Yes.

9 MR. McKAY: So just a suggestion.

10 THE COURT: I appreciate the update, and I'll
11 give you some more direction on that.

12 MR. McKAY: Thank you, Your Honor.

13 THE COURT: Mr. Hursh.

14 MR. HURSH: Judge, if I may, Mr. McKay's comments
15 sparked something. If you would give me just a minute, I
16 wonder if it would be possible to somehow marry the issues
17 related to the discovery in the protective order to the
18 examiner order in such a fashion -- Mr. McKay said that the
19 examiner would be a -- he could move very quickly with
20 that. If there would be some way to immediately, once the
21 examiner is appointed, get everything into his hands that
22 has been produced and let him evaluate where that stands.

23 And the reason I say that is that I am concerned
24 that, despite the parties' best efforts - and I make that
25 comment not just with regard to myself and my co-counsel

1 and my client, but with regard to, you know, the best
2 efforts of Credit Suisse's counsel and Credit Suisse - I am
3 concerned that without the examiner or some third party to
4 look at this issue, we will be back before you. And I
5 don't think that's a great use of the time, of the Court's
6 resources. And getting it in the eyes of an examiner
7 would, perhaps, solve that issue.

8 I previously mentioned, I believe at the last
9 hearing, that one of the concerns was that everything
10 that's being produced is being viewed through a lens. The
11 examiner, Your Honor, would provide an independent lens.

12 And in light of the testimony regarding the cost,
13 the time, and those sorts of things, if, in fact, the
14 examiner says, "I've looked at this and, absolutely, you
15 know what? There's problems. We need to move ahead," that
16 would be one thing.

17 If the examiner looks at it and says, "You know,
18 I've looked at the 8,000 - 10,000 documents that have been
19 produced by all the parties," and, you know, reports to the
20 Court that, in fact, he's not concerned, that would save,
21 certainly, tremendous effort and expense in both the
22 production and the review by Credit Suisse.

23 THE COURT: I appreciate your comments. I
24 certainly will take it under advisement. I am not so
25 certain I'm going to throw an examiner into the middle of a

1 discovery dispute between CrossHarbor and Credit Suisse. I
2 think I'll deal with that.

3 MR. HURSH: Thank you.

4 MR. CHEHI: Your Honor, in connection with the
5 adversary and some of these other matters, you mentioned,
6 you know, Judge Peterson --

7 THE COURT: Yes.

8 MR. CHEHI: -- being available, perhaps, for
9 acting in some ADR role or mediation role. You know, we
10 would welcome the Court's direction to all the parties to
11 consider mediation of the plan issues. And, you know, that
12 could encompass some of these other larger issues to, you
13 know, create what we think has been lacking. And everyone
14 will disagree with why that's been lacking and maybe blame
15 it on us. But let's get beyond that because I think this
16 case could benefit from having what I'll call a regular
17 mediation process to the extent it could be helpful without
18 delaying litigations and without delaying whatever other
19 progress is going forward. We're amenable to that. We've
20 always invited other people to talk to us. We haven't had
21 many conversations, but perhaps a mediator would facilitate
22 that.

23 THE COURT: I appreciate the comment. Other than
24 the bidding and solicitation and the issue over the
25 employment of CB Richard Ellis, Inc., it looks like the

1 only other matter I have - and correct me if I'm wrong; I
2 could have missed it in the docket - is the expedited
3 motion for valuation of secured claim.

4 And I think I know Mr. Patten's position on this
5 already, based on what he has said.

6 MR. PATTEN: In addition to what I've already
7 said, Your Honor, I don't think we've had adequate or
8 reasonable notice to have a hearing on valuation.

9 THE COURT: Well, we like to do these things on a
10 day notice, you know. It moves things along.

11 MR. PATTEN: I've had to explain that to
12 out-of-state counsel, Judge.

13 If we're going to have a valuation hearing, then
14 I think, certainly, due process requires a little bit more
15 notice than one day. And we'll proceed to retain an
16 appraiser if this moves forward on this basis. But I would
17 object to any valuation hearing today because we simply
18 haven't been given the opportunity to prepare for it.

19 THE COURT: I appreciate your comments.

20 Mr. Chehi.

21 MR. CHEHI: It's all right if I continue to stand
22 here, Your Honor? It's tough to get in and out.

23 THE COURT: You certainly may because I don't
24 know if you can get out from behind there anyway.

25 MR. CHEHI: That's the practical problem.

1 Your Honor, what we want to do is have the
2 valuation hearing set at the earliest possible time and,
3 certainly, as we stated in our papers, before the
4 conclusion of any disclosure statement hearing on any plan.
5 And we think if there is --

6 THE COURT: Unless otherwise ordered by this
7 Court as to extension of time for that.

8 MR. CHEHI: Well, that's right. And there's --
9 you know, the Riley case and, you know, local rules require
10 that there be, you know, motions brought on for addressing
11 these issues. And this is not, as I think Mr. Patten or
12 someone said, this is not all about the value of a truck or
13 a piece of equipment.

14 THE COURT: That was Mr. Beckett.

15 MR. CHEHI: Mr. Beckett, that's right. He's very
16 good. What we'd like to do is, you know, bring on the real
17 issue, the 800-pound gorilla in the case. And let's not,
18 you know, kid ourselves about the issue, and let's not
19 allow the debtors to say, "Well, we have this market test
20 here that's going to address all these issues," because it
21 really doesn't address the issue of our collateral.

22 THE COURT: Well, isn't it, in fact, subsumed
23 within the adversaries?

24 MR. CHEHI: It is not, Your Honor. And, again, I
25 think there's three components to our claim.

1 THE COURT: Okay.

2 MR. CHEHI: The dollar amount of the claim; the
3 validity of the liens, what they cover; and, thirdly, the
4 value of the collateral that is subject to the liens.

5 And if we assume for argument purposes, without
6 prejudice to the outcome of the adversary proceeding, that
7 our claims will be allowed in the scheduled amount,
8 \$309 million-plus, and our liens are valid and enforceable,
9 not invalid and avoidable - and that's the subject of the
10 adversary proceeding, to get it that - then that begs the
11 last question, and that's the question of value.

12 And Your Honor has addressed the issue of value
13 already at our adequate protection hearing. That was the
14 value that was ascribed to our collateral. They want to
15 substitute a whole different set of value to it by saying
16 that, "The value of that apple is really the value of this
17 orange we have in this plan, this equity that we're going
18 to be selling." We disagree.

19 And we have a right under the code, and we think
20 we should move forward with that so that it creates some
21 clarity. Maybe Your Honor will say, you know, collateral
22 has no value, little value, or maybe it will say it has
23 something that approximates what the Court found earlier.
24 That will do more towards eliminating uncertainty in the
25 case about some very fundamental issues. That will be the

1 thing that brings people to consensus on a plan, because
2 everybody else is going to have to deal with those values
3 and how our claim is going to be treated even before the
4 adversary is done. And that would bring on a settlement of
5 the adversary, if need be, in the context of a global
6 settlement under a plan.

7 If these issues, these large issues are left
8 outstanding, as they would prefer they would be, then we're
9 going to have a train wreck if their plan goes forward
10 because it's not going to be confirmable. If these issues
11 are joined, then everyone will know what they're bargaining
12 around. They'll know what the size of the pie is and what
13 the secured creditor entitlement is.

14 THE COURT: Mr. Patten, how much time do you need
15 on the --

16 MR. PATTEN: Valuation?

17 THE COURT: -- valuation?

18 MR. PATTEN: Well, we'd have to hire an
19 appraiser. And so I just requested Mr. Zimmerman and
20 Mr. Beckett to modify that pretrial order to set the expert
21 witness reports for April 1st, which I think is the soonest
22 I can have a report from an appraiser.

23 MR. CHEHI: Your Honor, I beg to differ on that
24 approach because the valuation, again, is different than
25 the legal issues of the allowability of the claim and the

1 validity of the liens, whether they're avoidable on
2 whatever theory, whether the claims are subject to
3 subordination. Those are legal issues that I think address
4 historical facts. The issue of value is: What's the value
5 of the collateral today? Is it any different than it was
6 in November or December? What is the value of the
7 collateral?

8 They can hire an appraiser, they can do whatever
9 they want to do. We were told last week the debtors have
10 no independent view of value of any of this, and that's why
11 there was no value in the disclosure statement. We pressed
12 them on that in our discussions with the objections to the
13 disclosure statement. And so they don't have an
14 independent view of value. Let them find somebody who has
15 a view of value, and let them bring it in.

16 THE COURT: Isn't that what he just asked?

17 MR. PATTEN: That's what I want. I need until
18 April 1st.

19 MR. CHEHI: Until April 1st?

20 MR. PATTEN: Yes.

21 THE COURT: I mean Mr. Chehi, this is March,
22 what, 4th?

23 MR. PATTEN: The 4th.

24 THE COURT: Getting an appraiser to value this
25 even by the 1st of April is going to be a push. Maybe you

1 already have yours in place, I don't know. Do you?

2 MR. CHEHI: It's not our experience it takes that
3 long, Your Honor, but if they need that time. But we would
4 also respectfully ask that the disclosure statement
5 hearings will be adjourned and -- or have that hearing at
6 the same time as the disclosure statement hearings on
7 whatever plans and disclosure statements might be -
8 (inaudible) - at that time, because we think that's all
9 very material to the adequacy of the disclosure statement.

10 MR. PATTEN: Your Honor.

11 THE COURT: Mr. Patten.

12 MR. PATTEN: The value may be material to Credit
13 Suisse, but they already know what they think the value is.
14 Obviously, if we're going to have a disclosure statement
15 hearing sometime in early April, we're not going to have a
16 plan confirmation at the end of April. And if the bidding
17 and solicitation procedures order is held up, which I would
18 kind of expect Credit Suisse to argue next, then we have
19 nothing in process for another month.

20 Again, Your Honor, I think this is a diversion,
21 and I would urge the Court that we need that bidding and
22 solicitation procedure order to get the ball rolling here.
23 That's what we want to do. If Mr. Chehi -- I don't know
24 why we can't have the disclosure statement that describes
25 what the plan is. It isn't Credit Suisse's plan, it isn't

1 what they want us to do, but it's what we're doing and it's
2 what we're proposing. The valuation --

3 THE COURT: Well, the only issue regarding the
4 disclosure statement is whether it provides adequate
5 information to the hypothetical investor. I mean, you
6 know, I realize that you may argue, "Well, we need to know
7 everything going into plan confirmation," but if it
8 provides adequate information, I mean everybody can make
9 their own conclusions with what information is available.

10 I would venture to guess there's not one person
11 that's involved in this that really needs much more
12 information in the disclosure statement than is already
13 there, and that you can go to plan confirmation and object
14 over the terms of the plan, is where we really are.

15 I mean how much information is really not known
16 in the disclosure statement, seriously, by any of the
17 parties? I mean CrossHarbor, certainly, has been
18 infinitely involved in this arrangement; the members have
19 been involved to some degree; Credit Suisse certainly knows
20 the dealings that have gone on in this whole arrangement
21 since the time the loan was given.

22 So I guess I think that there's probably more
23 than adequate information out there to assist the parties.
24 And I realize you're all going to object to that, but --

25 MR. CHEHI: No, I'm not going to object to it.

1 I'll just mention this, Your Honor: I haven't read the
2 documents that were filed overnight, but doing my best
3 reads of the disclosure statement and the plan to date, the
4 varieties of those documents that have come across the
5 wires, it's impossible to know what, if you're a creditor
6 voting on this as a general unsecured creditor - which we
7 may be if we have a deficiency claim - what is the economic
8 value of a general unsecured creditor's claim in the case.

9 There is no -- it doesn't tell the creditors what
10 a range of value might be, what's the potential recovery
11 for the general unsecured creditors. It's just not there.
12 You can read that disclosure statement back and forth. And
13 it also doesn't tell us what the values are in terms of the
14 collateral for purposes of making an 1111(b) election. And
15 those are, those are fundamental issues. And they will
16 have -- that election, if made, will have profound
17 consequences for other creditors in the case. And so the
18 issue of value is actually important.

19 THE COURT: Well, but still have your objections
20 to confirmation that will deal with those same issues.

21 Anyway, Mr. Patten.

22 MR. PATTEN: I won't say any more.

23 THE COURT: As it relates to the hearing for the
24 valuation, what time is your person supposed to be
25 available, Mr. Patten?

1 MR. PATTEN: Your Honor, his plane, I understand,
2 lands in Palm Springs at 11, which is noon our time. And
3 the video conference room, I'm told, is real close to the
4 airport.

5 We can put on other witnesses. We would call
6 Mr. Greenspan. And so we can certainly put him on and
7 proceed with him and wait for Mr. Lehr to deplane and
8 arrive.

9 THE COURT: Okay. Well, it's about a quarter-to.
10 I can see what's going to happen here. Let's break, and
11 that will give him time to appear. Rather than going
12 without lunch into the afternoon, we'll break right now and
13 we'll reconvene at quarter-to-one.

14 MR. McKAY: Your Honor, can I make just one
15 comment before I forgot about this?

16 THE COURT: Mr. McKay.

17 MR. McKAY: I'm sure this afternoon will be fast
18 and furious.

19 One thing that the amended disclosure statement -
20 and I don't know if it's been incorporated with the plan -
21 does is provide for the consolidation of Yellowstone
22 Mountain Club and Yellowstone Development. And I think
23 that we need to get that out on the table. I believe it
24 should be done by motion, noticed, and that Debtors put on
25 evidence to support consolidation under the law. And I

1 don't know how it can be done simply by fiat under the
2 plan. So I just raise that. I don't know what the Court's
3 view about that is, but I didn't want to forget about that
4 in everything else that's proceeding. Thank you.

5 MR. BIRINYI: Your Honor, if I might.

6 THE COURT: You certainly may.

7 MR. BIRINYI: Richard Birinyi.

8 THE COURT: I'll let you get to the mike before
9 you start talking.

10 MR. BIRINYI: I guess I get the honor --

11 THE COURT: You might restate your name.

12 MR. BIRINYI: Richard Birinyi from
13 Bullivant-Houser.

14 THE COURT: Okay.

15 MR. BIRINYI: And I get the honor, at least a
16 little bit, of working through the nuts and bolts of 1129
17 and 1123 and all of those strange sections. But with
18 respect to this issue, 1123 expressly provides that the
19 plan can provide for consolidation. So I think it is a
20 confirmation issue and would not be required to be brought
21 by a separate motion.

22 THE COURT: Okay, thank you. We'll be in recess.

23 (The lunch recess was taken.)

24 THE COURT: This is the continuation of the
25 contested matters in Yellowstone Mountain Club, LLC,

1 08-61570.

2 I want to touch upon the examiner issue for a
3 moment. At the time we granted the order, it was pretty
4 much all stipulated by everyone that an examiner needed to
5 be appointed because of the statutory mandate of this --
6 the mandate of the statute to basically investigate insider
7 transactions, etc., etc., which is set forth in Credit
8 Suisse's motion. At the time we granted that order,
9 basically we indicated that upon request of parties, we
10 would then narrow the scope of the examiner's duties, I
11 think kind of on the basis of what Mr. Warner had talked
12 about happening in Texas.

13 And, you know, I look at it and all the things
14 that we've gone through this morning and in the past on
15 discovery, and it looks like Credit Suisse is doing all the
16 stuff that they were requesting an examiner to do for them
17 by examining the insider transactions. So I guess I'm
18 wondering, do we really need an examiner? Aren't you
19 pretty much doing everything you requested the examiner
20 would do?

21 MR. CHEHI: Your Honor, we do not -- you know, as
22 long as we are getting our discovery and have latitude to
23 undertake an examination and an investigation of these
24 various insider relationships, you know, we're satisfied on
25 that point. To the extent that the Court thinks that there

1 are, you know, other areas that would require an
2 examiner's, you know, assistance or investigation, you
3 know, that's up to the Court. We are not insisting that
4 there be an examiner appointed today. We can withdraw that
5 motion if that makes the Court feel --

6 THE COURT: Well, it's been granted. But I don't
7 need to fill it, either.

8 MR. CHEHI: No, we're not asking you today to
9 fill that, Your Honor. You know, the one thing that we did
10 mention in the context of bidding procedures - I think we
11 mentioned that in our last response to the renewed bidding
12 procedures motion that the debtors have brought on - is
13 that not only should there be fair marketing and bidding
14 procedures implemented, but the -- it might be very useful
15 to the Court and to other parties to have a report from or
16 a monitoring of -- or, in other words, an independent view
17 of what the decision-making is.

18 And Mr. Patten addressed that this morning,
19 saying, "We don't think that's a good idea. You shouldn't
20 substitute an examiner for the debtors because the debtors
21 should be doing that, and Ms. Blixseth can be doing it
22 because she knows a lot about Yellowstone Club," or
23 something. But that's, obviously, our great concern is
24 that we have an insider process and --

25 THE COURT: Well, I guess I don't know at this

1 point in time what could be going on that isn't going to be
2 dealt with through the requests and the documents that have
3 been ordered. I don't think we need a third party to be
4 going over the same stuff and adding another layer to this
5 at the expense of the estate. That's my opinion.

6 So I just want to be clear, because it was your
7 motion. We granted it pretty much because it was
8 statutorily required. And I think, obviously, so that the
9 trustee knows, given the fact that he's spent time
10 conferring with people and has people that might want to
11 look at it, I'll be honest, I don't know that there's any
12 other aspect that the Court independently wants examined at
13 this point in time that all of these -- all of you active
14 attorneys aren't doing, to be quite honest with you.

15 MR. CHEHI: Perhaps we could wait until the
16 conclusion of the hearing today and see how it goes on the
17 bidding procedures, and the like, but right at this moment,
18 we're in agreement with you, Your Honor, that interjecting
19 an examiner in some way is not necessarily going to add
20 value but might be an additional expense at this point.

21 THE COURT: Yes. And I'm not so certain that a
22 trustee adds value at this point, aside from the United
23 States Trustee. I'm not sure that adding another --

24 MR. MCKAY: No offense taken, Your Honor.

25 THE COURT: -- having another party in this is

1 necessary, but we'll see where today goes.

2 Mr. Beckett, you had a comment?

3 MR. BECKETT: If I may, I'm going to try Chehi's
4 means of talking from here.

5 THE COURT: I understand.

6 MR. BECKETT: Very briefly. Your last comment
7 helped a lot, Your Honor. From the committee's
8 perspective, the appointment of a trustee at this time
9 would be a disaster. An examiner would -- to the extent
10 the Court had concerns, an examiner would be a much better
11 route, in the committee's view, than a trustee. And so my
12 comments about the examiner this morning were motivated, in
13 large part, by the pendency of the motion for the
14 appointment of a trustee.

15 THE COURT: I understand, I understand. Well,
16 the trustee motion isn't even ripe. You never know, the
17 U.S. Trustee may withdraw that before it becomes ripe. I
18 don't know. But they can do what they wish, and we'll take
19 it up as appropriate.

20 Mr. Warner.

21 MR. WARNER: Your Honor, as the Court alluded, I
22 spoke last hearing on the issue of an examiner. My first
23 duty as examiner in the Asarco matter was specifically to
24 monitor the sale process; and more specifically, to monitor
25 and report back to the Court that everybody had access to

1 information fairly, everybody was given access to the
2 debtor. It was not a referee, it was not a mediator, which
3 the Court made very clear.

4 But what his order did say - and this is Judge
5 Schmidt in Corpus - was: You will monitor the process and
6 report back to the Court that the process was implemented
7 fairly; and that during the process, there were no changes
8 in the process or there were no changes that became unfair;
9 or that any process approved by the Court didn't prove to
10 be unfair to the process and to all the parties.

11 And so the only thing I can think of - and I
12 agree with Mr. Chehi - I think that we may not need it at
13 this moment. And I'd like to see what goes on with the bid
14 procedures, if anything. But if there are procedures that
15 are ultimately implemented, maybe that's the duty of -- or
16 the first task assigned to an examiner.

17 THE COURT: I appreciate the comment. Duly
18 noted.

19 Well, at this point in time as it relates to the
20 examiner, I'm going to reserve on, I guess, making any
21 direction to the U.S. Trustee at this moment regarding
22 that. Let's see how today develops and whether one needs
23 to be appointed. Obviously, the longer we wait, the longer
24 it takes somebody to get in position to do the things that
25 they might be examining, which just slows the process down,

1 and I'm not in favor of that at all. And with the
2 professional involvement here, I don't know how anything is
3 going to get by anybody that would be unfair, to be quite
4 honest.

5 You know, another thing we've talked about -- and
6 I don't want to belabor this, but I just want to clarify,
7 and maybe this is kind of an I'm-thinking-out-loud process:
8 You know, in looking at the materials provided - a
9 disclosure statement, and that sort of thing - and looking
10 at 1129(b)(2) and 363(k), I guess a question that kind of
11 troubles me is, you know, 1129(b)(2) with its inclusion of
12 363(k) is a situation for the sale of assets and the right
13 of the creditor to step in and basically credit bid.
14 They're protected. And it kind of ties, even, with
15 1111(b). We're talking about assets that they're secured
16 against. And I've paraphrased. I probably should read the
17 statute into the record, but I think you all know where I'm
18 at.

19 So, in fact, if we have a disclosure statement
20 and plan that is talking about equity interests and the
21 sale of equity interests and stalking horse and bidding,
22 given the structure - and certainly correct me if I'm wrong
23 in how I'm looking at this - the structure is such that for
24 anyone besides CrossHarbor to come in and bid, such as
25 Credit Suisse, would, in essence, have to come in with new

1 money in the bidding process to exceed the stalking-horse
2 bid and would not be able to utilize their debt in a
3 credit-bid situation because you're selling equity
4 interests, not sale of the property.

5 Now, if you go the other way and there's a
6 provision in the disclosure statement, I believe, that
7 references that if they do the 1111(b) election, that then
8 the bidder, successful bidder, would have the ability to
9 surrender the secured asset to Credit Suisse except for
10 those items that are not secured by Credit Suisse. So you
11 would have a situation where Credit Suisse may end up with
12 their property, depending upon what scenarios happen, and
13 then that would leave the new corp. with the equity
14 interests, as I understand it. That would be the
15 membership agreements, etc. So you could have a situation
16 where some of the assets go to Credit Suisse; the new corp.
17 has the memberships; and I think there's a lodge, or
18 something, that's not secured.

19 To this point, have I kind of read correctly what
20 is contemplated by the disclosure statement and plan? Let
21 me have debtors' counsel --

22 UNIDENTIFIED SPEAKER: Yes, Your Honor, you have.
23 And I think it's because the 1111(b) rights -- unlike a
24 363(k) credit bid, the 1111(b) rights are all or nothing.

25 THE COURT: Yeah. But under a confirmed plan,

1 under 1129(b)(2), cramdown, they would still have the
2 protection of the 363(k) right to bid at a sale, right, if
3 you were selling their assets?

4 UNIDENTIFIED SPEAKER: If you were selling their
5 assets under -- you are correct. If you are selling their
6 assets, they would have a right to credit bid under 363.

7 THE COURT: And as it stands right now, the only
8 way that Credit Suisse can really participate in this would
9 be to come in with new money in excess of whatever the bid
10 amounts would be at the time of the bidding?

11 UNIDENTIFIED SPEAKER: Well, Your Honor, the
12 contemplation is -- and the reason why it's structured this
13 way is because there's a substantial amount of the assets
14 of the going concern that are not subject to the Credit
15 Suisse lien. As you alluded to, the Warren Miller Lodge,
16 which is basically the heart of the whole project and where
17 everybody gets all of or most of the experience and the
18 parking and the -- it's right next to the lifts. And with
19 that bifurcation, it is almost impossible to structure a
20 transaction where you could just sell Credit Suisse's
21 collateral and still have a going concern. So that's part
22 and parcel of why we've negotiated this.

23 THE COURT: What about access? I mean does the
24 club own access?

25 UNIDENTIFIED SPEAKER: The access, Your Honor, is

1 subject to all of the horizontal developments. The roads
2 and everything are subject to CC&R's recorded interests
3 with respect to the real estate so that all of the members
4 and owners of individual properties have the right to use
5 the roads to get to their places.

6 THE COURT: Okay.

7 UNIDENTIFIED SPEAKER: Some of the, some of the
8 individual property owners have separate easement
9 agreements. And I think you entered an order with respect
10 to approving the assumption of the secondary access right
11 that was part of an agreement with the Madison County. I
12 want to say it's about two and a half weeks ago.

13 THE COURT: I think some of the DIP financing was
14 to be provided for that, or something.

15 UNIDENTIFIED SPEAKER: The DIP financing covered
16 that because that was part of the approval of the master
17 plan for the densities there, that there be an alternative
18 access route for the fire and safety and all that kind of
19 stuff.

20 THE COURT: Okay.

21 UNIDENTIFIED SPEAKER: And then, as well, one of
22 the subsidiaries that's not a debtor, in point of fact, for
23 the entirety of the owners of the property - and this is
24 part of the agreements with Madison County, as well - those
25 services, the fire and electricity and all that kind of

1 stuff, those are being billed and supplied by the debtor.
2 But all of that infrastructure, it's not entirely clear to
3 me looking in the credit documents -- like the roads and,
4 stuff like that, and the infrastructure, the lines of --
5 that's underneath the ground to pump the water, all of that
6 stuff is not necessarily Credit Suisse's collateral. And
7 even if it is, it's subject to all of the reciprocal
8 easement rights in the CC&Rs.

9 THE COURT: Okay, okay.

10 UNIDENTIFIED SPEAKER: This is why we did it the
11 way we did it, because, as Mr. Beckett alluded to, this is
12 a complicated asset because there's so many moving parts.
13 It's almost impossible to treat it like a truck and say,
14 "Okay, Credit Suisse, we'll just take your truck down to
15 the used car lot and sell your truck."

16 THE COURT: But in one instance, you're saying
17 whoever would acquire the bid would also have the ability
18 to surrender the property to Credit Suisse.

19 UNIDENTIFIED SPEAKER: Well, but that's -- once
20 again, that's more an economic issue. And it relates --
21 and I go back to the early days when I read Ken Klee's
22 article about "All You Ever Wanted to Know About Cram
23 Down".

24 But that is the only way -- if they make their
25 1111(b) election, that means they have said, "We will take

1 our collateral, we waive a right to deficiency. Just give
2 us back our bundle of rights."

3 THE COURT: Right, okay. But, in fact, in order
4 for them to bid, though, then to buy the equity interest,
5 they're going to have to come up with an amount -- if they
6 wish to bid at the time of sale, they're going to have to
7 come up with an amount of money, new money, to exceed the
8 bid.

9 UNIDENTIFIED SPEAKER: Well, basically, that's
10 because what they're buying is not only their collateral,
11 but the Warren Miller Lodge and all of the, you know, the
12 infrastructure, the --

13 THE COURT: The member agreements.

14 UNIDENTIFIED SPEAKER: All of -- like there's a
15 whole list in their collateral documents of excluded
16 collateral - the fire trucks, all of the things that are
17 required to keep this property as a property that all of
18 the members bought - that's what they have to pay for.

19 The bid procedures order -- and I think when you
20 get into the bid procedures order - and we made this this
21 morning, this explanation - it does have a provision in it
22 that gives them setoff rights. If you rule that they would
23 have setoff rights and if they asked, it gives them setoff
24 rights with respect to the portion of the whole, the
25 portion of the going-concern business that represents their

1 collateral, and only requires them to pay cash for the
2 unencumbered portion.

3 And, of course, the unencumbered portion is what
4 gets the unsecured creditors paid, gets the members their
5 rights under all of their entitlements under their CC&Rs
6 for the ones that have bought the, bought the property.
7 And so that's, that's what we have contemplated, and that's
8 the only way we --

9 THE COURT: So what's the mechanism to determine
10 the amount that they would have to pay for the interest
11 with the offset?

12 UNIDENTIFIED SPEAKER: That gets done at the
13 confirmation hearing. And this goes back to what
14 Mr. Patten was saying. We perceive that the marketplace
15 should set the value of the entirety. And Mr. Chehi has
16 given you the sort of odd proposition that, somehow or
17 another, the part of the going concern that Credit Suisse
18 has as its collateral is worth more than the marketplace is
19 going to determine is the entirety of the value of the
20 going concern. Now, I have some fundamental problems with
21 that logic.

22 But at the time of the confirmation here, the
23 plan says that you are going to allocate the value of the
24 entirety of the going concern. Whether it's \$100 million
25 on the stalking-horse bid or 150 million because there's

1 other bidders, you're going to allocate the value between
2 all of the intangible, between the Warren Miller Lodge, and
3 between the unencumbered assets that are part of the
4 project and the encumbered assets, and you're going to say,
5 "Okay, this 100 million - 150 million; 60 percent Credit
6 Suisse, 40 percent unencumbered."

7 And that's going to determine, you know, where
8 the, where the dollars go at the end of the day.

9 THE COURT: Do you think the way that's
10 structured -- well, that's an unfair question to you. I
11 won't ask it at this point.

12 Mr. Chehi you have a question -- or you have a
13 statement, not a question.

14 MR. CHEHI: Let me give you my spin on the
15 1111(b) in these circumstances of this case.

16 Number 1, if we were to elect the 1111(b), we
17 would have a right to have our liens run through on the
18 collateral through the end of the case, and the only way
19 they can satisfy our claim is through the cramdown
20 requirement and giving us the indubitable equivalent which,
21 as he mentioned, might be turning over all of the
22 collateral that we have to us; or, alternatively, giving us
23 a cramdown note in the full amount of our secured claim -
24 what's called "310" for purposes of today - with a present
25 value equal to the value of our collateral.

1 THE COURT: Exactly.

2 MR. CHEHI: Now, that latter approach I don't
3 think works in the economics of their plan. They're not
4 proposing to give us the note. What their plan says is, is
5 if we elect an 1111(b), they're going to give us our
6 collateral back. And if we elect an 1111(b), we'll be
7 happy to take our collateral back, but that renders the
8 plan utterly unfeasible and non-confirmable. Because if
9 you look at the projections, they provide for the sale of
10 lots over 10 - 15 years, or whatever it might be. We have
11 a lien on memberships in the club and proceeds of
12 membership sales, not -- it's not as though they get the --
13 they take that away from us if we elect an 1111(b). They
14 have, I think, a misconception about what else we get. We
15 have liens on the ski lifts, on the ski trails; important
16 amenities.

17 And if they think their plan is going to be
18 feasible with us taking our collateral back, including all
19 the skiing infrastructure -- they may keep the Warren
20 Miller Lodge and they may think there's a big value
21 attached to that, but that is -- whatever it cost to build
22 that - and it's not our collateral - that is not a very
23 valuable asset. And we're ready to put on a witness today
24 who will testify to that.

25 In short, Your Honor -- and not to forget the

1 other piece of our collateral, which is the BGI notes. We
2 take it all. And if we take all of that and exercise an
3 1111(b) election, I don't even have to read their
4 disclosure statement as it was filed last night. I know
5 what they filed a couple days ago, and if it's anything
6 like that, their plan is unfeasible and non-confirmable,
7 and there's no -- whatever it is they think they have
8 there.

9 And so these are the sorts of issues that the
10 Court has to understand before you authorize a disclosure
11 statement and a plan process which is going to end up in a
12 train wreck for the debtors as well as everybody else.

13 THE COURT: Okay. So I was unclear that the
14 member agreements were a part of the collateral, as well.
15 Apparently --

16 UNIDENTIFIED SPEAKER: Your Honor, that -- there
17 certainly is an issue on that. And, obviously --

18 THE COURT: Well, and which the adversary
19 probably deals with, as well, to some degree. No?

20 UNIDENTIFIED SPEAKER: Obviously, we haven't
21 filed --

22 THE COURT: No, I mean Mr. Beckett's. No?

23 MR. BECKETT: I don't believe so.

24 THE COURT: Okay, okay. Well, I raise just that
25 general dialogue because I see some concerns there from the

1 bench's standpoint as to how that's dealt with. So having
2 said that --

3 MR. CHEHI: One last point, just one important
4 point.

5 MS. BLIXSETH: Your Honor --

6 MR. CHEHI: A fundamental predicate of the plan
7 is that it strip off the liens, our liens off of the
8 property that would be surviving with the acquiror here,
9 NewCo. And that can't happen, No. 1, if we elect an
10 1111(b); and, therefore, the whole stalking-horse proposal
11 -- never been executed and no one's bound by it, but those
12 are -- the terms require that all those liens be stripped
13 off. That can't be possible.

14 And, No. 2, they're giving us some sort of new
15 collateral package in trying allege that that's the
16 indubitable equivalent. And taking our liens off of that,
17 that does not satisfy, again, the cramdown requirements.
18 Our liens survive. And that's the point of 1111(b), the
19 cramdown of secured creditors. They can't do -- what
20 they're, in effect, trying to do is sort of a hybrid asset
21 sale, you know, equity sale where they get the benefits of
22 an equity sale, we don't get the credit bid, and they get
23 the benefits of a 363 sale without our credit bidding where
24 they can strip the liens off.

25 THE COURT: Okay. Well, I appreciate the

1 dialogue, and I think it clarified some things. With
2 that --

3 MS. BLIXSETH: Your Honor, this is Edra.

4 THE COURT: Yes.

5 MS. BLIXSETH: You asked me to notify you when
6 the gentleman arrived, and he has arrived.

7 THE COURT: Very good. You know, could I have
8 him sit where I can see him? I don't know if you can move.
9 You know, there's another chair that I see there on the
10 side. That's visible. I can see whoever sits there or
11 even one forward, just so you're more convenient so you're
12 not sitting on each other there. There, that's fine, if
13 you're comfortable.

14 MR. CHEHI: If we could have the person identify
15 themselves for the record and who they represent?

16 THE COURT: We will, we will.

17 Also, is there anyone else in the room besides
18 you two?

19 MS. BLIXSETH: No.

20 MR. LEHR: No.

21 THE COURT: Okay. Now, I'll ask that the new
22 person identify himself.

23 MR. LEHR: My name is Steve Lehr, Your Honor.

24 THE COURT: Okay. And who are you with?

25 MR. LEHR: I'm with CB Richard Ellis.

1 THE COURT: Okay, very good. Thank you.

2 With that, then, let's proceed with those two
3 matters that are kind of tied and related together: The CB
4 Richard Ellis application and the objection thereto and
5 reconsideration, as well as the bidding and solicitation
6 procedures.

7 MR. CHEHI: Can I proceed with the motion for the
8 reconsideration first, Your Honor, on the CBRE?

9 THE COURT: I'll let you proceed.

10 MR. CHEHI: Thank you. Let me come to the
11 podium.

12 Thank you, Your Honor. We, the prepetition
13 lenders, through their agent, moved on February 20th for
14 reconsideration of the Court's February 10 order
15 authorizing the employment of CB Richard Ellis as a broker
16 because Paragraph 4 of the debtors' application to employ
17 CBRE misstated or misrepresented that CBRE's services will
18 include soliciting and procuring a prospective purchaser
19 for land, buildings, and improvements owned by the debtor.
20 In other words, it proposed a marketing of the debtors'
21 assets. And on the basis of that application, we believe
22 Your Honor entered that order.

23 And I think Your Honor made it clear today that
24 in looking at our papers and then looking back at the
25 actual listing agreement with CBRE, the debtors have

1 modified what had otherwise been a standard listing
2 agreement which would have recited references to looking
3 for prospective purchasers of land, building, and
4 improvements and substituting in some defined term, equity,
5 for the equity of the debtors or the reorganized debtors.
6 I'm not sure if they were that specific.

7 The listing agreement also expressly incorporates
8 the flawed bidding procedures that this Court disapproved
9 on February 18th. And that's in the listing agreement,
10 Section 1.3. We believe that the order Your Honor entered
11 on the flawed bidding procedures, the original bidding
12 procedures, require a robust marketing process. We agree
13 with that. That was the purpose of our initial motion to
14 compel, which, you know, was denied as moot, I believe.

15 And, indeed, what has to happen here is there has
16 to be a very energetic encouragement of third-party bids
17 for either the equity of the reorganized company, but most
18 importantly, for any alternative transaction, any
19 transaction being an alternative to the CrossHarbor
20 transaction, because we think that that plan process is
21 flawed and non-confirmable. Time is a wasting, and this
22 type of marketing should proceed expeditiously.

23 The debtors have objected to this in their
24 objection to our motion for reconsideration and are
25 actually asking that the Court not expand the broker's

1 marketing efforts beyond a sale of the equity under the
2 debtors' insider plan. And, again, the plan is referenced
3 very clearly in the listing agreement through the
4 procedures. And we believe this is just another example of
5 the debtors' inability to understand and meet their
6 fiduciary duties in this case under the guise that, "This
7 is our business judgment. This is what we think is best
8 for everybody." And they're, in effect, cutting off any
9 alternatives of somebody bidding against CrossHarbor, which
10 the debtors have already admitted have chilled the bidding
11 process.

12 We think the right thing to do today, Your Honor
13 - and this will actually overlap with the other remaining
14 matter - is that the Court should order that the employment
15 order be modified, the listing agreement be modified to be
16 very broad in what type of marketing CBRE is doing, that it
17 should include not just a sale -- or a marketing and an
18 identification of prospective purchasers of the equity
19 under the so-called plan, but also find purchasers for
20 assets; purchasers for plan-based transactions that have
21 different transaction structures than the CrossHarbor plan;
22 indeed, look for any expressions of interest from anybody
23 who's qualified to, in effect, sponsor a transaction,
24 whether it be a plan-based transaction or not, that will
25 deliver the highest maximum value to the estates and,

1 therefore, to the creditors.

2 We think that that process should have begun
3 before Christmas when we were told that it was going to be
4 initiated. And that to the extent that it has been limited
5 to date to just a sale of the equity, that should be
6 changed very rapidly. CBRE should go about marketing. And
7 there's no need today, frankly, to pass judgment on --
8 unless you want to reject them out of hand, which I think
9 is appropriate; but to approve the sort of bidding
10 procedures the debtors have proposed or any bidding
11 procedures.

12 All you need to do is get the broker marketing.
13 The parties can return to identify what are fair bidding
14 procedures at some later date. The important thing is to
15 identify buyers and investors.

16 THE COURT: Okay. Do you wish to ask any
17 questions of the witness?

18 MR. CHEHI: We're not going to, no. We're not
19 going to ask any questions of that witness. We may have
20 some of our own witnesses and testimony to put on.

21 THE COURT: Okay. Thank you, Mr. Chehi.

22 Mr. Patten.

23 MR. PATTEN: I have questions for the witness,
24 Your Honor.

25 THE COURT: I hope someone does.

1 Do you wish to call your witness?

2 MR. PATTEN: Yes, I would call Mr. Lehr. I'm
3 sorry, Your Honor.

4 STEVEN LEHR, WITNESS, SWORN

5 DIRECT EXAMINATION

6 BY MR. PATTEN:

7 Q. Would you please state your name and address?

8 A. Steve Lehr; 67 Otis Avenue, St. Paul Minnesota.

9 Q. Mr. Lehr, what is your occupation?

10 A. I'm the managing director of the Land Service Group of
11 CB Richard Ellis.

12 Q. Can you tell me what your post high school education
13 is?

14 A. I have a bachelor of science degree. I majored in
15 international management from St. John's University, and I
16 have a juris doctorate from William Mitchell College of
17 Law.

18 Q. How long have you been employed at CB Richard Ellis?

19 A. I've been employed with CB Richard Ellis since 1998,
20 March of 1998.

21 Q. When did you graduate from law school?

22 A. 1990.

23 Q. Between graduating from law school and working for --
24 with CB Richard Ellis, what kind of work did you?

25 A. I was in the private practice of law in the areas of

1 employment and real-estate law.

2 Q. Do you have a focused type of business practice at CB
3 Richard Ellis? Do you specialize in particular types of
4 property?

5 A. Yes. Our group, the Land Services Group, is focused on
6 raw land, entitled land, and improved residential land.

7 Q. And at CB Richard Ellis, are you working with anyone
8 else --

9 A. Yes, I'm working with --

10 Q. -- in connection with this engagement?

11 A. Yes. I'm working with Jeff Woolson, who's the managing
12 director of our Golf & Resort Properties Group.

13 Q. Is it customary in your firm for different people that
14 have different specialties, I'll say, to work together on a
15 particular project?

16 A. Oh, yeah, yeah. Jeff and I have worked together in the
17 past, actually.

18 Q. Okay. So if I understand it right, your background and
19 your focus is on developing raw land and Mr. Woolson's is
20 on membership types of property?

21 A. Yes.

22 Q. And are you familiar with what I want to call the
23 Yellowstone Club?

24 A. Yes, I am.

25 Q. And does the Yellowstone Club fall within the, I'll say

1 the scope of your, your practice and Mr. Woolson's
2 practice?

3 A. Yeah. We have a bit of an overlap when it comes to
4 master plan communities, and Jeff's assignments usually
5 involve a private golf course or some other amenity.

6 Q. In connection with this case, have you reviewed a
7 proposed bankruptcy plan?

8 A. Yes, I have.

9 Q. Have you reviewed a disclosure statement?

10 A. I have.

11 Q. Now, this may not be fair, but do you know the date of
12 the plan that you reviewed?

13 A. Yeah. The plan that I reviewed is, is blank as to the
14 date.

15 Q. Okay. How about the disclosure statement?

16 A. That's what I mean. I'm looking at the disclosure
17 statement cover page, and it's blank.

18 Q. Okay.

19 A. (Inaudible, audio cuts out.)

20 Q. How long have you had the plan and disclosure statement
21 to review?

22 A. Over the last three days.

23 Q. Okay. Have you reviewed a proposed bidding and
24 solicitation procedures order?

25 A. Yes.

1 Q. Have you reviewed objections to the proposed bidding
2 and solicitation procedures order?

3 A. Yes.

4 Q. Have you reviewed the definitive agreement which is
5 attached to the plan?

6 A. I have.

7 Q. Have you had an opportunity to review the note or the
8 mortgage that are a part of the definitive agreement?

9 A. Yes.

10 Q. And, finally, have you reviewed the Credit Suisse
11 motion to reconsider the engagement of CB Richard Ellis in
12 this case?

13 A. I have.

14 Q. Have you reviewed documents in the data room that was
15 established by FTI?

16 A. Yes, I have.

17 Q. And have you been provided any other documents or
18 information in connection with your engagement in this
19 case?

20 A. I suppose that I have.

21 Q. Do you understand that Credit Suisse seeks to have CB
22 Richard Ellis market assets of the various entities that
23 are the Yellowstone Club?

24 A. Yes, I do.

25 Q. And do you understand that the debtors want you to

1 market the equity?

2 A. I do.

3 Q. And would you tell the Court what you understand the
4 distinction between the assets and the equity to be?

5 A. I think that the equity includes the reorganized
6 debtors' interest in the entities, the new memberships, and
7 the assets of the debtors exclusive of the debt. Selling
8 the assets would include both the debt and equity.

9 Q. Have you previously marketed property on selling an
10 equity interest as opposed to the assets?

11 A. I have not.

12 Q. Has it ever come up in any negotiations or discussions
13 or transactions in which you've been involved?

14 A. Yes. We have had buyers specifically ask to buy equity
15 as opposed to the assets. And as I understand it, the
16 buyers were considering tax considerations for buying an
17 entity's equity as opposed to assets.

18 Q. If the equity is marketed, do you have an understanding
19 as to what happens to the existing membership obligations?
20 And by that, I mean the club membership obligations.

21 A. Yes.

22 Q. What is that understanding?

23 A. It's my understanding that the debtors will cancel the
24 existing memberships and issue new memberships. The buyer
25 will purchase the new memberships in connection with buying

1 the equity.

2 Q. So will the memberships remain in the same entity as
3 the assets, the tangible assets: The land, the
4 improvements, and so forth?

5 A. I believe that is the case.

6 Q. If the assets are marketed, do you have an
7 understanding as to what happens to the existing membership
8 agreements?

9 A. Well, it's my understanding that the memberships might
10 not necessarily go with the assets. I am not entirely
11 sure, though.

12 Q. Do you have an opinion as to whether the value is
13 maximized if the memberships are included with what I'll
14 call the assets in a transaction?

15 A. Yes.

16 Q. Can you tell the Court what facts you have relied on in
17 coming to your opinion?

18 A. I have been advised that the current memberships
19 account -- the current members account for 80 percent of
20 the real-estate sales referrals. I understand that the
21 value of the real estate is really linked to the value
22 proposition of the memberships, the private skiing that's
23 associated with the memberships.

24 MR. SAUNDERS: Excuse me, Your Honor.

25 THE WITNESS: There's similar real estate down

1 the road at Spanish Peaks, but it does not have the same
2 kind of ski facilities or amenities that the memberships
3 would afford.

4 THE COURT: Just a moment. Mr. Saunders?

5 MR. SAUNDERS: Yeah, Your Honor, could I object?
6 It seemed to me that the introductory question was asking
7 for some kind of expert opinion, and I didn't understand
8 Mr. Lehr to have been offered in that capacity. I also --
9 it seems as though he's reading from something. And if
10 he's reading from an expert report, or something, then we'd
11 like to have a copy of that.

12 THE COURT: Okay. Mr. Lehr, what are you reading
13 from?

14 THE WITNESS: I have prepared some notes.

15 THE COURT: It's not a report?

16 THE WITNESS: No. Do you want to see it?

17 THE COURT: We may, we may.

18 THE WITNESS: Some handwritten notes --
19 (inaudible, audio cuts out.)

20 THE COURT: No. Actually, I can't read it, but I
21 can see that there's writing on it. I guess the next
22 thing: Mr. Patten, are you offering him as an expert,
23 or --

24 MR. PATTEN: Well, I'm trying to lay the
25 foundation for him to render an opinion, and so I guess I

1 am offering him as an expert. I've got some more
2 foundation to lay unless it's --

3 THE COURT: I'll allow you to do more foundation.

4 MR. PATTEN: Thank you.

5 THE COURT: The objection is overruled at this
6 point.

7 Q. (By Mr. Patten) Mr. Lehr, do you or any member of your
8 CBRE team have experience with membership clubs?

9 A. Yes. Jeff Woolson is very experienced with membership
10 clubs.

11 Q. And sales transactions involving membership clubs?

12 A. Yeah. Jeff had transacted approximately 60 membership
13 clubs; in the last three years, probably 30.

14 Q. And in reaching your opinion, are you incorporating
15 your experience in your sales as well as the experience of
16 other members of your CBRE team in sales of membership
17 clubs?

18 A. I am. And Jeff and I are working together on some
19 membership clubs. We just divide up the work a little to
20 our specialties.

21 Q. Okay. And so you have experience in marketing
22 membership clubs?

23 A. I do.

24 Q. I initially asked if you had an opinion as to whether
25 the value was maximized by keeping the memberships in the

1 transaction, and then I asked you a series of questions.

2 But can you tell the Court what your opinion is about
3 whether the value is maximized by keeping the memberships
4 included?

5 MR. SAUNDERS: Your Honor, at this point, I would
6 object. I don't think that Mr. Lehr has been qualified to
7 be an expert.

8 And I want to say on the side, we're -- as I
9 think Mr. Chehi made clear, we're perfectly thrilled to
10 have CBRE get on with this process, but to the extent that
11 Mr. Lehr is being offered as an expert on something that
12 might go to one of these motions, then we do care about
13 that. And I think he's conceded that he has no personal
14 experience in marketing club memberships; and, instead, I
15 think what's proposed is that he's going to tell the Court
16 about what his colleague's opinion might be. I don't think
17 he's adequate to testify as an expert, Your Honor.

18 THE COURT: As an expert?

19 MR. PATTEN: I think the witness testified, Your
20 Honor, that he did have personal experience working with
21 Mr. Woolson in selling membership clubs. And they've got
22 several of them at this time.

23 THE COURT: Okay. I guess I heard it the other
24 way, that he's dealt with development of raw land and
25 Mr. Woolson has dealt with membership clubs.

1 THE WITNESS: But, Your Honor, we are working
2 together on projects that involve membership interests. We
3 divide up the work differently amongst us.

4 Q. (By Mr. Patten) Can you tell me the Court what project
5 you're working on?

6 MS. BLIXSETH: Your Honor, we're missing --
7 (inaudible, audio cuts out.)

8 THE COURT: Just a moment.

9 MS. BLIXSETH: We can't hear Mr. Saunders.

10 THE WITNESS: (Inaudible, audio cuts out.)

11 THE COURT: You couldn't hear Mr. Saunders. I
12 could hardly, either.

13 THE WITNESS: We're working on the Winchester
14 Country Club in Sacramento, and on this project, and in
15 pursuit of some additional similar projects.

16 THE COURT: Mr. Lehr, I guess the notes that I
17 have down is that you had not had any personal involvement
18 in selling equity interests, but you have seen it sold in
19 other transactions. Is that correct?

20 THE WITNESS: Well, we're working together on the
21 Winchester Country Club, which involves equity memberships.
22 And Jeff, for his part, is handling more the membership
23 aspects of that sale.

24 THE COURT: Okay.

25 MR. SAUNDERS: Your Honor, could I voir dire?

1 THE COURT: Well, I guess the thought process
2 that I have is I'm not so certain that I need to qualify
3 this person as an expert if he is testifying as to what
4 he's going to do if he is allowed to proceed in this
5 employment capacity.

6 MR. PATTEN: Your Honor, that's not really the
7 scope of the examination that I intend. I intend to ask
8 him about the bidding and solicitation procedures order
9 and, frankly, whether or not it will -- whether he can
10 effectively market the property within the confines, I'll
11 say, of that order.

12 THE COURT: Right. And I don't know that he has
13 to be an expert to do that. I think he's testifying as to
14 what he's doing personally. And you'll certainly have your
15 ability to cross-examine him on those questions if you feel
16 he's not qualified to testify on what he has to say.

17 MR. SAUNDERS: Obviously, Your Honor, he's
18 entitled to testify as a fact witness about what he has
19 done or plans to do. The word "opinion" has been used an
20 awful lot, and it certainly seemed to me that what
21 Mr. Patten was trying to elicit from him was an expert
22 opinion on what the effect of the bidding and solicitation
23 procedures is going to be. And to that extent, we object.

24 THE COURT: Okay. Well, I'm going to allow him
25 to testify on a factual basis as a witness. At this point,

1 I'm not going to qualify him as an expert.

2 MR. PATTEN: Okay.

3 Q. (By Mr. Patten) Mr. Lehr, is the time frames contained
4 in the bid and solicitation procedures order -- you
5 understand what the deadlines are that are in that order?

6 A. I do.

7 Q. And do those -- with those time frames, are you able to
8 conduct an effective marketing program for this property
9 that we've asked you to market?

10 A. Well, we have roughly 45 days on the market. Would you
11 like me to go into what we've done to date and similar
12 projects with similar time frames, or --

13 Q. Let's start with what you've done to date.

14 A. Okay. What we've done to date is we've reviewed all
15 the due diligence available to us, we have toured the
16 property, we've interviewed several key people, we have put
17 together our -- a draft of an offering memorandum, and we
18 have put together what we call a "teaser". And yesterday
19 at about 11 p.m. Pacific time, that teaser went out, and we
20 had a phenomenal response to the teaser.

21 We received -- out of a group of 18,000 to whom the
22 teaser went to, we had an open rate of 30 percent, which is
23 one of the highest open rates we've had. And from that
24 group of people, which would be roughly 6,000 that looked
25 at it, we had 47 downloaded confidentiality agreements as

1 of about five o'clock yesterday afternoon.

2 Q. That was in one day's time?

3 A. That was in about six hours' time.

4 Q. Okay.

5 A. And we have laid out a schedule to meet up with the
6 time frames that are available to us. And, you know, I
7 think everybody here is in agreement that having more time
8 would be comfortable, and we have structured a process to
9 fit within the process as we understand it.

10 Q. In your experience, is that time frame adequate in
11 order to realize the maximum value for the property?

12 MR. SAUNDERS: Your Honor --

13 THE WITNESS: Well, we --

14 THE COURT: Mr. Saunders.

15 MR. SAUNDERS: I'm sorry, Your Honor. It sounds
16 to me like that's soliciting an expert opinion, based on
17 his experience whether something's adequate or not.

18 THE COURT: Well, I'm going to overrule and allow
19 this witness to testify.

20 MR. SAUNDERS: Thank you, Your Honor.

21 THE COURT: You may proceed.

22 Q. (By Mr. Patten) Go ahead, Mr. Lehr.

23 A. Well, I'd like to talk about three recent experiences
24 that I have had in marketing properties.

25 Last June, from about June to August, we went to market

1 with a \$187 million loan portfolio of land assets in and
2 around the Phoenix area. We called for bids and had them
3 closed by September to October. We had to get nine
4 different bidders to close on that portfolio.

5 And then we have another example here of where we've
6 had a similar time frame where we represented a national
7 home builder to dispose of nine separate communities within
8 the Denver area. It took us two weeks to do the due
9 diligence, create our marketing materials. And from the
10 same database that we used yesterday, we had a 23 percent
11 open rate, to give you an idea of the success of the
12 Yellowstone - (inaudible) - yesterday by comparison to
13 that. And we had roughly 50 signed CA's from that; and
14 from that, we received 18 offers. And I believe we did all
15 of that before December. We went to market in about
16 October, mid October, and we were able to narrow it down to
17 three, three bidders.

18 And then another example of a transaction that I was
19 involved in, we received an offer on Thanksgiving, we
20 negotiated a purchase agreement in December, we had public
21 notice and hearings in January of the following year, like
22 the next month. We had approvals of entitlements and
23 governmental incentives of up to \$24 million, and we closed
24 in February, on February 9th of that same time frame. The
25 grading equipment was brought on site February 12th, and

1 Cabela's was able to successfully open a
2 180,000-square-foot store in October of that same year.

3 So we have had similar marketing time periods, and
4 we've enjoyed some relative success in shorter time
5 periods.

6 Q. And in those prior cases, was there a data room or some
7 depository of due diligence material for prospective buyers
8 to review?

9 A. In the case of the Cabela's transaction, no; in the
10 case of the national home builder portfolio, yes; and with
11 respect to the loan portfolio last September, yes.

12 Q. Is the information that's contained in the data room in
13 this case of comparable detail as the information in the
14 data room in the two other examples that you gave?

15 A. Yeah, I would have to say that the data room was pretty
16 well populated. We have talked about some things that, you
17 know, we would maybe put in there. And some of the things
18 that we're missing, when I reflected back on them, are
19 maybe things that aren't even necessary.

20 Q. Is the data room -- is the information in the data room
21 sufficient for a prospective buyer to do its due diligence
22 in connection with this project?

23 A. You know, I think what we're doing over this next week
24 is we're going to be qualifying these bidders that
25 expressed interest through the confidentiality agreements

1 that they downloaded yesterday. And I'm sure it's ongoing
2 today. We want to add a little further organization to the
3 data room and complete our -- (inaudible.) And we -- you
4 know, the information is what it is. And I think that the
5 data room, for the most part, is in pretty decent shape.

6 Q. Are you satisfied that CBRE will have enough time to
7 effectively market this property?

8 A. I do think that we will.

9 Q. Are you familiar with the terms of the definitive
10 agreement?

11 A. I am.

12 Q. And do those terms impair CBRE's ability to effectively
13 market the property?

14 A. Not, not that I can think of right now.

15 Q. Do the terms "impair" -- impair, excuse me, the ability
16 to obtain a market value for the property?

17 A. You know, market value is a little different thing. I
18 mean it is what a willing buyer is willing to pay a willing
19 seller. And I'd be more comfortable telling you in 45
20 days.

21 Q. Well, will the definitive agreement impair the ability
22 of a willing buyer to come forward and make an offer?

23 A. I don't believe so. And with respect to the time
24 frames of the people that I've directly talked to about the
25 process that we laid out in the teaser - and I think what

1 we put on the teaser is that bids would be due mid April -
2 no one has objected to me that that's not enough time for
3 them to act. It's not discouraged them so far.

4 Q. Are there any unusual or extraordinary terms in the
5 definitive agreement?

6 A. Not that I can tell.

7 Q. Do the terms of the plan or the disclosure statement
8 that you've read impair the ability to market the property?

9 A. I don't believe so.

10 Q. Are you familiar with the overbidding protections in
11 the bid and solicitations procedures order?

12 A. I am.

13 Q. And will those protections have a chilling effect on
14 the bidding?

15 A. I don't believe so. Are you referring to the
16 \$1 million overbid requirement?

17 Q. Well, the initial, I think it's \$3.5 million overbid.

18 A. No, I don't believe so. That would represent something
19 less than 5 percent of the purchase price.

20 Q. Will a fixed procedure for everyone to follow be
21 beneficial or detrimental to the solicitation process?

22 A. You know, I think providing some structure to the
23 process is always pretty good. We try to even out the
24 playing field for everybody.

25 Q. And does the proposed bid and solicitation procedures

1 order provide the kind of structure that you're talking
2 about?

3 A. It is a structure, and there are many different ways
4 that you can do it. And, you know, we just intend to try
5 to live within the confines of the process that is laid
6 out.

7 Q. And given, given everything - the proposed order, the
8 time periods that are involved, the data room, the type of
9 property being sold - are you satisfied that you can
10 effectively market the property between now and mid April
11 when the -- when bids are solicited?

12 A. We are satisfied. We are working very hard and, in
13 many respects - (inaudible) - our time. And I don't think
14 we would be if we didn't think we could.

15 MR. PATTEN: Thank you very much. That's all I
16 have.

17 THE COURT: Mr. Saunders?

18 MR. SAUNDERS: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. SAUNDERS:

21 Q. Good afternoon, Mr. Lehr. How are you?

22 A. I'm well, thanks.

23 Q. Can you see me now?

24 A. Yes.

25 Q. Okay. I think you testified that you had never been

1 asked before to market equity. Did I get that right?

2 A. Yes, that is what I testified.

3 Q. Okay. So this would be the first time for you?

4 A. Well, insofar as the Winchester Country Club, if we use
5 that, I have.

6 Q. Well, I understood there to be a different issue that
7 involved whether or not you had ever been involved in the
8 marketing of clubs, and that's the area where Mr. Woolson
9 has his experience, right?

10 A. Right.

11 Q. Okay. But I understood you to say that you had never
12 been asked before to market equity as distinct from assets;
13 is that right?

14 A. Yes.

15 Q. Okay. You said that you had seen a note and a
16 mortgage; is that right?

17 A. Yes.

18 Q. Okay. When did you first see those?

19 A. Probably sometime in the last three days.

20 Q. Do you remember any of the terms of the note?

21 A. I do.

22 Q. What terms do you remember?

23 A. That the interest rate would be at 500 basis points
24 over LIBOR for a period of five years with the ability to
25 extend for an additional 50 basis points up to two times,

1 that the release price of any lots would be 500,000, and
2 that it could be in the 70 percent of loan to value.

3 Q. I'm sorry, it could be 70 percent of loan to value? Is
4 that what you remember?

5 I'm sorry, sir, can you hear me?

6 A. Yes, yes.

7 Q. Okay. You remember the note saying something about 70
8 percent loan to value; is that right?

9 A. Yes.

10 Q. Okay. And that was a requirement under the note? It
11 was a covenant; is that right?

12 A. I don't believe -- are we talking about the bidding
13 procedures? Because that's what I was -- (inaudible, audio
14 cuts out.)

15 Q. Okay. I think you testified that you have seen a note
16 and you saw this note for the first time a few days ago; is
17 that right?

18 A. Yes. And if you want to direct me to the note, I can
19 try to locate it and get it in front of me.

20 Q. Well, that's my concern. The first time I saw any note
21 was this morning, so I'm trying to find out about the note
22 that you saw a few days ago. Do you have it in the stack
23 of papers in front of you?

24 A. I have a bound -- these are, I believe, your exhibits.
25 Would I find it in your exhibits? If you just saw it this

1 morning, probably not.

2 Q. All right. Well, let's move on. Have you ever been
3 asked to market assets out of bankruptcy?

4 A. No.

5 Q. Okay. When you were first contacted about possibly
6 being engaged as a broker for the Yellowstone Club, when
7 was that?

8 A. Late December.

9 Q. Okay. And who contacted you?

10 A. I received an internal e-mail within the company.

11 Q. And do you know who had made the contact to CBRE from
12 Yellowstone?

13 A. I'm not sure, no.

14 Q. Okay. And what did that contact say? What was the --
15 what was said to you the first time you heard anything
16 about possibly being engaged?

17 A. That there was -- it was actually, I think, at the
18 suggestion of my superior in an e-mail chain.

19 Q. Okay. Who's your boss?

20 A. Chris Ludeman.

21 Q. Okay. Did the e-mail chain reflect when Mr. Ludeman
22 had first been contacted about the possibility of CBRE
23 being engaged by the Yellowstone Club?

24 A. No, I don't recall.

25 Q. Okay. Were you involved in submitting a proposed

1 engagement letter to Yellowstone Club?

2 A. An engagement letter or a marketing proposal?

3 Q. Either.

4 A. I was involved in putting together the proposal for the
5 marketing.

6 Q. Okay. And when did you do that?

7 A. Well, between late December and January 2nd.

8 Q. Okay. And was that provided to the Yellowstone Club on
9 January 2nd?

10 A. I believe so.

11 Q. Okay. When was the next time you were contacted?

12 A. Probably January 5th or thereabouts.

13 Q. Okay. Who contacted you on January 5th?

14 A. Ron Greenspan from FTI.

15 Q. Okay. What did he say?

16 A. Well, he just talked about trying to engage us to get
17 involved in a robust marketing plan of the club.

18 Q. Okay. And when was the next conversation you had with
19 Mr. Greenspan?

20 A. I really don't recall. I did not come prepared to talk
21 about when my communications were.

22 Q. When were you asked to actually begin the marketing
23 process?

24 A. Well, we understood in early January that we would
25 commence immediately, and then there was a period of time

1 where we did not. And then we were contacted again, I
2 think, later in January. And I understand that there was a
3 hearing sometime in mid February where we were being asked
4 to, to be reconsidered. And I think at that point in time,
5 we started to go into the war room and started taking a
6 look at the information available to us.

7 Q. Okay. So you didn't do any work, then, from the
8 initial contacts in early January through mid February; is
9 that right?

10 A. No, we did. In anticipation or in hopes of getting the
11 assignment, we did start to review material.

12 Q. Okay. Now, the time frame that you have in mind for
13 your marketing process is 45 days; is that right?

14 A. Well, 45 days is roughly from yesterday until April
15 15th, is what I was using as a benchmark. And the entire
16 process, as I understand it, from engagement in mid
17 February to closing would be roughly 90 days.

18 Q. Okay. But there would be a -- you're anticipating a
19 period of 45 days between when you first went out to the
20 market with information and when you would conclude the
21 marketing process; is that right?

22 A. What I was factoring was from yesterday until April
23 15th, which is when we understand the bids to be due.

24 Q. Okay. You've been told that that's the deadline for
25 bids, April 15th?

1 A. Yes.

2 Q. All right. And you've been told to operate within
3 those - (inaudible) - right?

4 A. (Inaudible, audio cuts out.)

5 Q. "Yes"?

6 A. Yes.

7 Q. Okay. Would you agree with me that one of the elements
8 of market value is that there have been an adequate time to
9 expose the asset to the market?

10 A. I would agree with you.

11 Q. Okay. If you had been instructed by the Yellowstone
12 Club to liquidate the Yellowstone Club and liquidate the
13 assets of the Yellowstone Club, how much time would have
14 been adequate for that?

15 A. You know, I think I'd need a few more facts. I mean
16 "What are the goals of the Yellowstone Club? What are the
17 time frames that they would want us to do that in?" I think
18 is where we would probably start the discussion.

19 Q. Well, would you agree with me that a 45-day time frame
20 for a real-estate asset like this is generally more
21 consistent with a liquidation sale than a full marketing
22 process?

23 A. I don't know.

24 Q. In your experience, do all of the potential bidders for
25 an asset or a set of assets have the same business plan in

1 mind for the assets that are being marketed?

2 A. I would highly doubt that.

3 Q. Okay. Is it sometimes the case that you have a
4 particular bidder who's interested in a particular subset
5 of the assets and maybe another bidder who's interested in
6 a different subset of the assets? Does that happen
7 sometimes?

8 A. Absolutely, particularly with portfolios that we offer.
9 Some people want just a couple of the assets, and some
10 people want the whole portfolio.

11 Q. And that's not a chaotic process that you are unable to
12 manage as a marketer, right, the fact that some bidders
13 might be interested in different things than other bidders,
14 right?

15 A. No. I mean we have offered portfolios, and we have
16 entertained offers for subsets.

17 Q. Okay. And can you -- are you generally able to do a
18 better and more successful job selling assets, marketing
19 assets when you don't have to live within the confines of a
20 particular structure?

21 A. Well, the whole genesis of our manage bid process is to
22 tighten up the time frames and get the market to focus on
23 an asset for a period of time. What we have found is that
24 if we don't have end dates for people to respond to, they
25 will get distracted by another pursuit of a deal or they

1 will go on a vacation or do something else than to work on
2 the project that we're putting in front of them. So we
3 like to have some time frames and some structure. One, it
4 evens out everybody's understanding at a given point in
5 time, and it brings people to a point at the same point in
6 time.

7 Q. Put aside, though, with -- put aside your point with
8 respect to time frame. Doesn't it help you to run a more
9 robust marketing process to invite bidders to propose bids
10 on any kinds of subsets of the assets that they want to?
11 Isn't that beneficial?

12 A. Well, I think one of the problems where you offer the
13 subsets is that we have what we call "cherry picking", that
14 the better assets tend to get bid on and get bid up, and
15 the lesser assets do not move, then. And that, I think, is
16 one of the benefits of offering something as a whole, is
17 that it allows for the good with the bad, and you don't --
18 (inaudible, audio cuts out.)

19 Q. Okay. But you -- I'm sorry, sir. Were you finished?

20 A. (Inaudible, audio cuts out.)

21 Q. You could always sort that out later. If somebody gave
22 you a bid that was only on certain cherry-picked assets and
23 you didn't have a matching bid or a complimentary bid on
24 the other assets, you could always decide later that that
25 wasn't a winning bid, right?

1 A. I suppose you could. And, you know, again, given the
2 time to be able to do all that sorting out, I think you
3 can. But what I would add is that the more standardized
4 that you can make the offering, the more standardized you
5 will get the offers in.

6 Q. Okay. But, certainly, if you had, if you had a longer
7 period of time to market an asset like this, if you had
8 three or four or five or six months, okay, then you would
9 be more open to letting people make offers on different
10 business plans and with different sets of assets, right?

11 A. I suppose. But that's not my understanding of the
12 situation here.

13 Q. Okay. In your experience, is it possible to run a
14 sales process well or run it poorly?

15 A. I suppose.

16 Q. All right. That's why somebody would hire you, to do
17 the process well, right?

18 A. I would hope.

19 Q. Okay. So a particular asset could fetch a different
20 price if it was marketed well as opposed to being marketed
21 poorly, right?

22 A. I suppose.

23 Q. Okay. And it's also true that the length of time
24 available to market the price can affect the value that's
25 obtained for it, right?

1 A. I suppose.

2 Q. Okay. And would you agree with me generally that the
3 more time you had available to market an asset, the higher
4 price you would be able to get for it?

5 A. Well, not necessarily. In an environment of falling
6 prices, the more time you have, the lower the price will
7 end up being.

8 Q. Well, as a general matter, would you prefer to have
9 more time or less time to market an asset when you're
10 engaged to market it?

11 A. It's more comfortable to know that you have more time.

12 Q. Okay.

13 A. And I think my previous testimony was, was pretty clear
14 that I think we're all in agreement that if given an
15 unlimited time, we would ask to have probably slightly more
16 than 45 days on the market time.

17 Q. Okay. Would you expect bidders for the Yellowstone
18 Club to have to incur expenses in order to educate
19 themselves to the point where they could make a bid?

20 A. I would.

21 Q. All right. They're going to incur due diligence and
22 other kinds of expenses, right?

23 A. Absolutely.

24 Q. Okay. The making of a bid isn't costless to the
25 bidder, right?

1 A. Absolutely.

2 Q. Okay. And in circumstances where one bidder is
3 perceived to have a leg up or an inside track on purchasing
4 the asset, in your experience are sometimes other potential
5 bidders deterred from incurring those due diligence
6 expenses to make a bid?

7 A. Not necessarily. When you -- any property has always
8 got a neighbor. And oftentimes the neighbor is the guy who
9 has been viewing the property for the longest time, is most
10 familiar with it, and he's always the potential bidder out
11 there. And I don't think that discourages other people
12 from submitting bids on properties.

13 Q. Well, certainly sometimes in your experience people are
14 deterred from making bids when they think that there's
15 somebody already out there with an inside track, right?

16 A. I would categorize those bidders as not being very
17 motivated to begin with.

18 MR. SAUNDERS: Could I have just a minute, Your
19 Honor?

20 THE COURT: Thank you. Mr. Warner, any
21 questions? I saw you taking notes.

22 MR. WARNER: I have a few, Your Honor. Thank
23 you.

24 CROSS-EXAMINATION

25 BY MR. WARNER:

1 Q. Sir, I think you said that you sent out your teaser
2 yesterday, correct?

3 A. Yes, we did.

4 Q. Ask you received about 45 responses so far in a matter
5 of six, or so, hours, correct?

6 A. Well, we are able to track the number of people that
7 actually view the document. And out of 18,000, roughly
8 6,000 people viewed it. Of the 6,000 people that viewed
9 it, 47 people went the extra step to fill out a
10 confidentiality agreement.

11 Q. You also said that in that one-day period, nobody said,
12 "We can't do it by mid April," correct?

13 A. Correct.

14 Q. Okay. But are you pleased by that, or is that really
15 somewhat irrelevant since the teaser's only been out there
16 a day?

17 A. Well, I had conversations with probably at least a
18 half-dozen people yesterday in response to it. And it did
19 not come up in the conversation with them, no.

20 Q. But that's based upon the teaser, correct?

21 A. That's based upon the teaser and it's based on the
22 conversations we had yesterday.

23 Q. You said that you looked at a draft of the disclosure
24 statement, correct?

25 A. Yes.

1 Q. And I think you also said you looked at a draft of the
2 definitive agreement; is that correct?

3 A. Yes.

4 Q. Okay. Is the definitive agreement attached to the
5 teaser that went out?

6 A. I do not believe so.

7 Q. Okay.

8 A. No.

9 Q. So those people that you spoke to didn't have the
10 benefit of knowing what they may have to be looking at in
11 the form of a contract at this point in time, correct?

12 A. (Inaudible, audio cuts out) -- the teaser, and I can
13 read it for you, is that bids would be due April 15th.

14 Q. And I appreciate that. I understand that. What I'm
15 looking at -- my question is focused on the definitive
16 agreement. Those that saw the teaser didn't necessarily,
17 unless they went to their own effort in looking in the
18 Court's docket, see the definitive agreement proposal, did
19 they?

20 A. Yeah, I don't know what the people did that I spoke
21 with.

22 Q. You didn't provide the definitive agreement to them?

23 A. We did not.

24 Q. Okay. I'm not sure if the question was asked: I know
25 you've been asked about -- several times now about selling

1 equity, but I want to focus on your efforts pursuant to a
2 bankruptcy court order. Have you sold assets through a
3 bankruptcy process for a debtor?

4 A. Not in the last three years, for sure.

5 Q. Okay. Have you -- and I don't need to ask the question
6 about selling equity for a debtor because we've been told
7 you haven't sold equity.

8 A. Yes.

9 Q. Okay. So you're really not familiar with the
10 bankruptcy code processes of selling assets versus
11 potentially selling equity?

12 A. Not probably as familiar as you are, no.

13 Q. I appreciate that. What I'm getting at is: You're not
14 able to say to this Court that it is, in this instance,
15 better to attempt to sell the equity than it is maybe to
16 attempt to sell assets under a provision like Section 365
17 of the code? You're not able to analyze that, correct?

18 A. Well, given time and given that section of the code, I
19 could probably analyze it.

20 Q. Okay. But you haven't at this point?

21 A. That section of the code's not been provided for me,
22 no.

23 Q. You understand that if the Court were to approve the
24 definitive agreement, that any buyer interested in making a
25 bid over the stalking horse has to follow the financial

1 proposal, if you will, the business model of the definitive
2 agreement? Do you understand that?

3 A. I guess I don't understand that. I thought that the
4 business model and financial model was provided as an
5 example, by way of example. And I would, I would think
6 that people, in doing their own due diligence, would come
7 up with their own financial modeling.

8 Q. What about their own determination of what the capital
9 requirements on a go-forward basis would be for their
10 model? Do you think that that's up to them?

11 A. I would think that people would try to come up with
12 their own assessment in their due diligence of what the
13 capital requirement moving forward would be.

14 Q. At this early stage of the process, you have a teaser
15 out. At this early stage, do you believe you need a formal
16 contract that everybody else needs to review and follow if
17 they were going to overbid, or could that come in a bit of
18 time from now?

19 A. You know, we've done this before where we've provided a
20 form contract, and it works pretty nicely to be able to
21 compare apples to apples in the end.

22 Q. But for the early stage, do you actually need that out
23 there?

24 A. Well, at some point rather quickly, I would like to see
25 it in the war room, yes. When we get closer to the point

1 in time where people would be asked to be putting together
2 their bids, I would want to see it in there.

3 Q. You talked about the concept of the definitive
4 agreement not -- and I think your words: Not impairing the
5 value of what you're going to sell.

6 Do you remember your testimony to that effect?

7 A. I do.

8 Q. Okay. If the definitive agreement was less restrictive
9 and a party could bid on subsets, groups of assets, and
10 various contracts; and I'll represent to you that the
11 bankruptcy code has a method of transferring contracts --

12 A. Okay.

13 Q. -- would that be a less restrictive transaction that
14 would also not impair the process?

15 A. I suppose I would like to see what was proposed and
16 compare it to the agreement that I've seen.

17 MR. WARNER: Great, thank you. I have no further
18 questions.

19 MR. MOORE: Your Honor, may I? Paul Moore.

20 THE COURT: Mr. Moore.

21 MR. MOORE: Do you mind if I do it from here?
22 I'm really boxed in now.

23 THE COURT: Yes, yes you may.

24 MR. MOORE: Thank you.

25 CROSS-EXAMINATION

1 BY MR. MOORE:

2 Q. Mr. Lehr, do you think it will enhance your ability to
3 sell the assets if you sell the ski resort with the lodge
4 as opposed to without it?

5 A. Will it -- would you repeat the question?

6 Q. Will it be easier to sell or will it enhance value if
7 you sell the resort with the lodge as opposed to without a
8 lodge?

9 A. It's my understanding that there is a development pad
10 connected to the lodge. Are you talking about the
11 underground parking structure connected to the lodge being
12 part of the lodge?

13 Q. No. I'm referring to the base lodge that the club
14 members use. Is it easier to sell, is it easier to sell a
15 resort with a base lodge as opposed to without a base
16 lodge?

17 A. I would think that it would be easier to sell it with
18 the base lodge, yes.

19 Q. Okay. Is it easier to sell a ski resort that relies in
20 part upon members' dues with members or without members?

21 A. With members.

22 Q. Okay. Does CBRE do work with Credit Suisse?

23 A. I believe that we disclosed in our application for
24 employment the fact that we do --

25 Q. Okay.

1 A. -- and have.

2 Q. And does that work include matters with respect to the
3 Yellowstone Club? Because full disclosure is an issue in
4 this case.

5 A. I believe that our valuation group was asked to do a
6 valuation. I've not seen it, but that's just what I've
7 heard.

8 Q. So you have, in fact, heard that CBRE did an appraisal
9 or a valuation of the Yellowstone Club assets for Credit
10 Suisse?

11 A. Yes. Now, I've heard that, but I have not seen it.

12 Q. Do you know how recently that was?

13 A. You know, I think that it -- from what I heard, it was
14 done sometime in late October -- (inaudible, audio cuts
15 out.)

16 Q. Right about the time of the bankruptcy?

17 A. What?

18 Q. I'm sorry. Shortly before the bankruptcy filing?

19 A. I really don't know because I'm not sure of the exact
20 date of the bankruptcy filing.

21 MR. MOORE: Okay, thank you.

22 THE COURT: Anyone else? Mr. Patten, any
23 redirect?

24 MR. PATTEN: None, Your Honor.

25 THE COURT: Okay. Next witness?

1 MR. PATTEN: Your Honor, may the witness be
2 excused?

3 THE COURT: Yes, I have no problem with that
4 unless there's an objection.

5 You may be excused, which means you're free to
6 leave the room and go back to your other duties and work,
7 if you wish.

8 THE WITNESS: Thank you, Your Honor.

9 MR. PATTEN: Mr. Lehr?

10 THE COURT: Oh, just a moment, just a moment.

11 MR. PATTEN: Mr. Lehr?

12 UNIDENTIFIED SPEAKER: Mr. Lehr?

13 UNIDENTIFIED SPEAKER: Just a second.

14 THE COURT: What's going on here?

15 MR. PATTEN: Never mind, you can go. Thank you.

16 THE COURT: The witness may leave.

17 MR. REAM: Good afternoon, Your Honor. Larry
18 Ream on behalf of the debtors.

19 We started this out by Mr. Chehi saying he want
20 to -- it was his motion on CBRE. So I'm not sure he's
21 finished before we move on.

22 THE COURT: That's true. It's actually his --
23 well, he didn't have any witnesses, so he's pretty much
24 done.

25 MR. CHEHI: On CBRE. And I think I stated what

1 our position is: That they should be employed under a
2 revised form of order --

3 THE COURT: A broader form.

4 MR. CHEHI: -- which allows them to and, in fact,
5 directs them to market very broadly.

6 MR. REAM: With that, Your Honor, we would move
7 forward, then, if the Court permits --

8 THE COURT: Yes.

9 MR. REAM: -- with the motion to vacate the bid
10 procedures order and approve the revised procedures.

11 And I would call Mr. Greenspan.

12 THE COURT: Okay. Mr. Greenspan, you may come
13 forward to be sworn.

14 RONALD GREENSPAN, WITNESS, SWORN

15 DIRECT EXAMINATION

16 BY MR. REAM:

17 Q. Mr. Greenspan, would you please state your name and
18 address for the record?

19 A. Ronald Greenspan; 633 West Fifth Street, Los Angeles,
20 California.

21 Q. And you've testified before His Honor previously in
22 this case?

23 A. I have.

24 Q. And your position with the debtor currently?

25 A. I'm chief restructuring officer.

1 Q. Mr. Greenspan, the Court, as you know, denied the
2 previous motion for approval of the bidding procedures.
3 Did you, did you read his memorandum decision?

4 A. I did.

5 Q. And what is your understanding what the Court's
6 concerns were with regard to those initial bid procedures?

7 A. There were a number of concerns: Number 1, the Court
8 expressed a concern about transparency; Number 2, the Court
9 was concerned that certain provisions in the proposed bid
10 procedures favored or tilted the playing field in favor of
11 CrossHarbor; and I think third, to a certain extent, the
12 Court was concerned that certain provisions in the proposed
13 procedures might not lead to obtain the highest and best
14 offer for the estate.

15 Q. Did the Court suggest the debtors should reach out to
16 the committees, both the B's and the unsecured creditors
17 committee, regarding input to the bidding procedures?

18 A. The Court did ask that.

19 Q. And what did you do to undertake input from those
20 parties and any others?

21 A. I did what we've been trying to do, and that is reached
22 out to all the parties, reached out both directly and
23 through counsel to the Official Committee of Unsecured
24 Creditors, reached out through counsel to the "B"
25 shareholders, and then I reached out to Credit Suisse.

1 Q. And as a result of those communications, were there
2 changes made to the initial bid procedures?

3 A. There were very substantial changes made.

4 Q. Do you believe that the changes that were made satisfy
5 the Court's concerns as you understood them?

6 A. I do.

7 MR. REAM: Your Honor, I would like to approach
8 the witness with the exhibits that were filed last night.
9 It would be Docket No. 515.

10 THE COURT: Okay, you may approach.

11 MR. REAM: Thank you, Your Honor.

12 Q. (By Mr. Ream) Mr. Greenspan, would you turn to what's
13 been marked as Exhibit C?

14 A. I have it.

15 Q. Do you recognize this document?

16 A. I do.

17 Q. And what is the document?

18 A. Well, it's, I believe, with the -- it's a red-line
19 that, as I understand, was attempted to be a red-line
20 between the submitted revised bid procedures and the bid
21 procedures that had originally been submitted. But due to
22 some issues between Word and WordPerfect, I think this is
23 not quite the final one. I think there's a paragraph in
24 the final one that's not in this.

25 Q. So your understanding is that this document is

1 essentially a red-line between the initial bid procedures
2 and the one that was submitted to the Court for the
3 revised. But there's an error on it, isn't there?

4 A. That is correct.

5 Q. And that error is that this particular red-line is, in
6 fact, missing a paragraph that's in the final order; is
7 that correct --

8 A. That is correct.

9 Q. -- the proposed order?

10 And what paragraph is that? Can you explain it to the
11 Court? And perhaps he could --

12 A. I mean I don't have the final in front of me. But what
13 it was, is there's another paragraph in between Paragraph 1
14 and Paragraph 2 here. The actual final order contains a
15 mandate for CBRE to be retained and robustly pursue a sales
16 process. So the actual order has a Paragraph 2 that deals
17 with -- says that about CBRE. It's actually a relatively
18 short paragraph.

19 And then, as best I can tell, all the rest of these
20 paragraphs are, in fact, as they are changed in the
21 final -- the revised order that's been submitted; with the
22 only other exception being, of course, since there's
23 another paragraph added, each paragraph in the final order
24 is sequentially one number higher.

25 MR. REAM: Your Honor, I'm not going to offer the

1 exhibit for admission, but I would like to be able to have
2 Mr. Greenspan refer to it repeatedly for illustrative
3 purposes.

4 THE COURT: Okay. I'll let you proceed.

5 Q. (By Mr. Ream) Mr. Greenspan, would you refer to what
6 is in this Exhibit C, Paragraph No. 3?

7 A. Yes.

8 Q. And there are interlineations shown on Exhibit C
9 showing additional changes. What are those changes, and
10 why were they added?

11 A. They were added in response to the Court's order and
12 to, I guess, memorialize the outreach and the involvement,
13 the formal involvement of additional parties.

14 In our original procedures, we had included the
15 official unsecured creditors committee as well as the ad
16 hoc members committee. The Court appeared to want to add
17 the active involvement of the ad hoc Class B equity
18 interest group, and so we redefined "committee". And so
19 you'll see through here there's many things -- that the
20 "committee", as a defined term, has involvement and
21 consultative rights. And so we've added the ad hoc
22 committee so that when we use the term "committee" here,
23 it's now all three committees: The UCC, the members, as
24 well as the "B" ad hoc.

25 Again, what we're trying to do is promote an active

1 bidding process. We also added the specific provision
2 after that, that by including these people, there's many
3 members there and many of them, quite frankly, may have an
4 interest in bidding on this property. We have reason to
5 believe that they do. We want to be sure that we have a
6 clean and fair process. And so part of the consultative
7 rights is to stay apprised of: Who's bidding? What are
8 they bidding? What are they saying? Who's touring the
9 property?

10 And we have the difficulty, particularly amongst a
11 number of the "B" members, that a number of those equity
12 holders may, in fact, want to actively participate as
13 bidders. And so we wanted to put a provision in there.
14 And we'll just have to deal with that issue as it comes up
15 and act appropriately.

16 Q. Turning to the next page, Mr. Greenspan, to
17 Paragraph No. 4. There are changes made to 4(b)?

18 A. Yes, there is.

19 Q. And what changes were made to 4(b)?

20 A. Several. There were two significant objections voiced
21 at the last hearing regarding the -- what's best described
22 as the purchase money note, the financing being offered by
23 the estate. There was an expression of concern that that
24 note was capped at \$70 million. I still have significant
25 concerns about increasing debt above that, but the

1 parties -- the committee wanted and Credit Suisse wanted to
2 see that note to be able to be bigger, so we increased the
3 amount of that note by 50 percent. We did that in
4 consultation with the committee so that now the note can go
5 up to 105 million rather than 70 million.

6 I will tell everybody it would not surprise me to see
7 the very same people that complained the note was too low
8 challenge the feasibility of the plan when we present the
9 plan that the debt service is too high because you now have
10 a big note. I still would rather have it at 70 million,
11 but the constituencies wanted it higher, and so we went
12 ahead and changed that up to 105 million, an increase of 50
13 percent.

14 The other thing, there was argument that the
15 specifications of the note had not been set forth in the
16 original procedures, and that's absolutely correct. It was
17 still under negotiation as to what would be satisfactory.
18 We've now resolved those negotiations. We've shared the
19 information from the committees, and we've laid out in here
20 some of the key terms set forth in the promissory note.

21 Q. There's substantial revisions to Paragraph C; is that
22 correct?

23 A. That is correct.

24 Q. And those revisions relate to an addition as well as
25 subtractions from that paragraph; is that correct?

1 A. Correct.

2 Q. And what was deleted? Let's start there.

3 THE WITNESS: Let's start with: What was deleted
4 is -- Your Honor, the provision before was that
5 CrossHarbor, if it is the successful bidder and does
6 continue to prosecute this development, intends to
7 contribute some property into the reorganized debtor. And
8 what we've provided is, is that the carryback note would
9 include that as additional collateral to make it a safer
10 note for everybody who's getting deferred payments out of
11 the, out of the plan.

12 There was -- but in order to have bidding, you
13 need to have some apples to apples. If additional
14 collateral is being put up by CrossHarbor, it's only fair
15 and the only way to really compare the remaining -- the
16 note that will be carried back is if there's additional
17 collateral posted by somebody else, by a competitive
18 bidder.

19 I still think it is advantageous for that note to
20 be more secure rather than less secure on an ongoing basis,
21 but due to the objections of the parties -- again, I think
22 that it's misunderstood, but due to the objections, have
23 struck that. So CrossHarbor still would intend to -- as
24 anybody else can, can contribute to the reorganized debtor
25 whatever they want, but it will not be collateral for the

1 note. And since now the note will simply be secured by the
2 existing assets of the debtor, there's no need for anybody
3 else to contribute additional collateral or anything else.
4 And so we pulled that out in response to both Credit
5 Suisse's and committee concerns.

6 Q. (By Mr. Ream) So to be clear, though, CrossHarbor is
7 going to continue to put those in if it's the successful
8 bidder, right?

9 It will continue to pledge those 31 golf course lots as
10 additional collateral, but it's no longer a requirement of
11 any alternative bidders to match that collateral?

12 A. No, I do not -- I believe it's CrossHarbor's business
13 plan to put that in if they're the successful bidder, but
14 they will not be pledged as collateral.

15 Quite frankly, I couldn't negotiate for them to pledge
16 it as collateral if somebody else that is in a competitive
17 bidding situation doesn't have to put anything in as
18 additional collateral. So as I understand the definitive
19 agreement right now, it will not be additional collateral.
20 But that's what was asked for by Credit Suisse and the
21 committee. They're going to be the ultimate beneficiaries
22 of the note. If they want it less secured rather than
23 more, that's their choice.

24 Q. The third line down, it makes reference to the CH
25 definitive agreement. Do you see that?

1 A. Yes.

2 Q. And you've heard some discussion and objection to the
3 definitive agreement, but let me ask you a question first:
4 When do you anticipate an execution of the definitive
5 agreement?

6 A. I would anticipate -- now that we've finished
7 negotiating the terms, I would expect that that would be
8 executed upon approval of the bidding procedures by the
9 Court, if it does approve the bidding procedures, such that
10 the bidder and thus the buyer protections are effective.
11 At that point, I understand CrossHarbor would be in a
12 position to execute and the debtor would be in a position
13 to execute.

14 Q. Why wouldn't the debtor want this executed in advance
15 of the Court's approval of the bidding procedures?

16 A. Well, frankly, I think they go hand in hand, but the
17 debtor certainly doesn't want to be obligated to make any
18 sort of payments or be bound in any way to CrossHarbor if
19 there's not an effective way to go forward with the
20 marketing of the assets.

21 Q. There's also a change near the end of Paragraph C.
22 What is that change for?

23 A. Yes. I believe we've heard a lot of discussion last
24 time and we've heard some continued discussion today about
25 what I'll describe as rigidity.

1 And to adopt Mr. Beckett's analogy, we are trying to
2 get a vigorous horse race going. But to get a vigorous
3 horse race, you do need to tell the horses and the jockeys
4 what time to show up, you do need to tell them the length
5 of the track, you do need certain rules and structures.

6 And, particularly, as has been expressed with a very
7 complex situation that involves collateral, noncollateral,
8 membership units, claims, and so forth, as a consequence, I
9 really do believe that we will have far more people
10 involved and we will have a much more workable process, a
11 process that can get to a successful end if, in fact, we
12 have some guidance. What we've tried to do is -- I'll best
13 describe it as soften that guidance, make it more malleable
14 so that if people have particular proclivities, particular
15 things that are of particular importance to particular
16 buyers, we can try to accommodate that.

17 Here, specifically dealing with the working capital,
18 it's been -- the question -- our definitive agreement right
19 now requires that the successful bidder commit to, in fact,
20 a closing, put in \$25 million in addition to the minimum
21 \$30 million into the reorganized debtor. It also
22 provide -- the definitive agreement requires that there be
23 \$50 million of commitments into the acquiror to be
24 subsequently funded.

25 There's been the question of: Is that too much? Other

1 people may have different business plans.

2 And for clarity's sake, anybody can pursue whatever
3 business plan they want to. There's not a single thing in
4 the definitive agreement or anyplace else that in any way,
5 shape, or form restricts the business plan that a
6 successful buyer can pursue.

7 And what we tried to do here is say that the working
8 capital that goes in, the subsequent working capital, needs
9 to be sufficient. And that's what we've said "provides for
10 sufficient working capital". We say:

11 "Not materially less than the amount to be
12 provided by the Purchaser in light of the capital structure
13 proposed by the bidder."

14 THE WITNESS: And what that's attempting to
15 recognize, Your Honor, is that if somebody does want to buy
16 all cash, if somebody wants lower leverage such that there
17 is less working capital needed - because this project is
18 going to run at a loss for the next couple years no matter
19 who owns it, whether you do anything or don't do anything -
20 that if the actual working capital requirements are going
21 to be less and are projected to be less, we can accommodate
22 that. And a prospective bidder would have to commit less
23 working capital if their structure provides that less is
24 going to, in fact, be needed.

25 Q. (By Mr. Ream) The next change is Paragraph D. What's

1 the purpose of the change in Paragraph D?

2 A. My recollection is that we just made it clear. What we
3 made clear was that we, in fact, would accept a
4 contingency. I mean we had always assumed it was a
5 contingency of the buyer being obligated, but that we made
6 it express that it would be okay for a buyer to bid with a
7 contingency being that the plan of reorganization against
8 substantially similar to that already filed or as might be
9 modified with the reasonable consent of the bidder.

10 And, again, trying to bring in some flexibility, that
11 the bidder will not be bound by exactly the plan that has
12 been filed, that there is opportunity for that to be
13 modified in an effort to broaden the field of potentially
14 interested bidders.

15 Q. Let's turn to the next page. And on the top of the
16 page is Subparagraph F.

17 A. Yes.

18 Q. What change was made here of significance?

19 A. Again, in response to requests of both Credit Suisse
20 and the committees, they wanted a lower, nonrefundable
21 deposit. I think in this environment and given the time
22 frame that our winning bidder has to, in fact, close or
23 we're out of cash, and given the magnitude of the asset
24 we're talking about, I think 10 million is still -- should
25 be a nonrefundable deposit. Both the committee and Credit

1 Suisse wanted it lower, and so we cut it in half to
2 \$5 million. And we're doing that in order to accommodate
3 their wishes.

4 Q. There's a substantial deletion from this paragraph, as
5 well, isn't there?

6 A. That is correct.

7 Q. And what is that deletion?

8 A. That the -- and I believe this was the committee's
9 comment. The committee did not want to see that
10 qualification presented or included within this paragraph,
11 and so we agreed to, to delete that qualification in
12 order -- I believe their perception was to ensure that we
13 had the full potential panel of qualified bidders bidding.

14 Q. All right. Moving to Paragraph H, this is a
15 confirmation, again, of a change made at the beginning
16 where decisions will be made in consultation with the
17 committees; is that correct?

18 A. That is correct. We specifically added: "After
19 consultation with the Committees." And as noted before, we
20 expanded the definition of "committees" to be all three.

21 Q. And this is a determination of which factor in
22 reviewing the qualified alternative bid?

23 A. This is to determine whether the alternative bidder has
24 sufficient financial wherewithal to go forward with it as
25 well as the nature of the adequate assurance of the

1 bidder's ability to perform in the future.

2 Again, there's a lot of constituencies here that not
3 only want to see value maximized, but also want to be sure
4 that what has happened to the club doesn't happen again.
5 And so there is -- and it's been a demand of both the ad
6 hoc committee as well as the UCC that the club, for lack of
7 better terms, be put into responsible hands and financially
8 capable hands. And this -- we did provide that in the
9 original bidding procedures, but that was a determination
10 to be made by the debtors; it's now being made by the
11 debtors in consultation with all three of those other
12 groups.

13 Q. Turn your attention now, Mr. Greenspan, to Paragraph M.

14 A. Yes.

15 Q. Could you please explain to the Court Paragraph M and
16 the purpose behind it?

17 A. Yes. Contrary to what has been said from the podium,
18 there's no attempt by the debtor to cut off anybody's
19 rights under the code or anybody's credit bid rights. What
20 we specifically provided here is that if the bankruptcy
21 Court determines that Credit Suisse has the right to credit
22 bid, then, in fact, Credit Suisse can -- we use the term
23 "credit bid". It's really the nature of an offset. It has
24 a right to offset their secured claim against what they
25 would otherwise bid.

1 And so, again, rather than trying and cut it off, when
2 we put this together, we were aware that there was likely
3 to be a suit; again, not by the debtor, but by the, by the
4 committee against Credit Suisse. And what we specifically
5 provided is, is that if the Court says they have both a
6 secured claim and they have the right to credit bid, then,
7 of course, they get to credit bid.

8 Furthermore, after listening to what has been happening
9 today, the debtor will change this. From the debtors'
10 perspective, from our perspective, we'll stipulate they
11 have a right, from the debtors' point of view, to credit
12 bid or offset their secured claim. That doesn't resolve
13 the issue of whether they have a secured claim, but from
14 our perspective, we would say they satisfy this.

15 THE WITNESS: Just so Your Honor can understand
16 the complications of a credit bid, whether it be for the
17 equity or whether it be a 363 sale of the physical assets,
18 first of all -- and I did this very early, is I solicited
19 all the parties' interests as to whether they thought we
20 should try to sell the collateral and the noncollateral
21 separate. And it was uniformly agreed, and I don't think
22 I've heard anything from anybody to the contrary, that
23 you're going to get a better overall value, the pie's going
24 to be a lot bigger - let's not worry about how to split up
25 the pie for a moment - but the pie's going to be a lot

1 bigger for everybody if you combine the collateral and the
2 noncollateral.

3 And the issue there is, is -- and somebody's
4 referred to it as "the lodge". The noncollateral is a
5 fundamental piece of this entire project. When we talk
6 about a lodge, I mean it's 100 -- it's a huge structure.
7 There's \$110 million in it. It's the parking structure,
8 it's the entire base of operations. Even though many of
9 the home sites are ski in and ski out, many of the members
10 drive down there and then leave from the high-speed chair
11 that starts at the bottom and then runs up. It includes
12 the multistory parking structure. The parking structure
13 was built, and you can see where it's unfinished to build
14 units on top of it. I mean it is -- it really is the
15 centerpiece. And that's not part of CS's collateral. It's
16 where the pro shop is, it's where the gym is, it's where
17 the major restaurant is that serves the entire resort as
18 well as the mountain. You can sell the two pieces
19 separately, and you're not going to get anywhere close to
20 the value as you will if a buyer can buy both of them.

21 But then, secondly, we also have an issue -- and
22 I mean amongst the three lawyers sitting there advising me,
23 you've got three different opinions as to whether -- I
24 think it's pretty clear Credit Suisse has a lien on the
25 memberships that have been sold already, but you have

1 unissued memberships. And there's a vigorous debate going
2 on - and my guess is they probably have a vigorous debate
3 over on their table, too - as to whether unsold memberships
4 are after acquired property or not. There's no cookie jar
5 of memberships sitting there that a lien attaches to today.
6 Those are created. Those come into being. The next 400
7 memberships only come into being when someone shows up,
8 buys a lot, gets offered a membership, and then buys a
9 membership that's created at that point.

10 And so I think there is a -- there's a
11 significant legal issue as to whether - and there's another
12 100 million, 150 million of revenue to be derived from
13 selling those yet-to-be-issued memberships - whether a lien
14 attaches to the future offering and creation of
15 memberships. And I don't know the answer to that one. And
16 I can tell you three lawyers over there have three
17 different opinions. So it's not a simple issue.

18 If we're going to a 363 sale, even assuming we
19 would - and I think that's very problematic - but if you
20 were, first of all, Credit Suisse can't bid on everything
21 that's being sold with a credit bid; and then, secondly,
22 there's a huge legal issue as to whether they have a lien
23 on and whether they're -- the credit bid would include a
24 value of future, to-be-issued memberships.

25 So the reason we teed it up this way is we

1 believe these issues really do meet -- and we were express
2 from the beginning - never going to hide the ball - that we
3 believe these issues need to be resolved by the Court if
4 they were to be able to credit bid. And so we've teed it
5 up as best we can. There's no way the debtor can resolve
6 these issues, and there's no way I could even resolve the
7 allocation of value without it being a major fight.

8 And also, quite frankly, the debtor doesn't have
9 a dog in that fight. I mean that is a fight between the
10 secured creditor, the unsecured creditors, and the "B"
11 holders. Because to the extent they don't have a lien on a
12 lot of this property, there may be a lot more value that
13 goes down to, to the equity or to the unsecured. So I
14 don't think the debtor has a dog in this fight.

15 The dollars that are paid in is what we want to
16 maximize, the size of the pie. How that pie is allocated
17 according to this I think is largely a legal issue that's
18 going to have to be resolved by the Court. It's a legal
19 issue as far as what 's collateral and whether they have a
20 lien, and I think it's a factual issue as to what's the
21 relative value between the collateral and the noncollateral
22 that's being sold. And it's quite clear we are, I think --
23 I know agree that we are going to be selling noncollateral
24 has part of the package.

25 So to simply say they can credit bid doesn't

1 answer any question, doesn't get us through any mechanics
2 at all. And that's why we did it originally, and that's
3 why we're still sticking to the original structure.

4 Q. (By Mr. Ream) Can I ask you a question about the
5 future memberships? You mentioned that 400 future
6 memberships attach to a lot. Are there lots in existence
7 to sell a membership to attach to?

8 A. No, you can't -- no, they're not. And we talk about
9 this whole concept of, boy, we could sell four different --
10 four bidders buy four different parts.

11 THE WITNESS: There weren't four parts to sell,
12 Your Honor. Remember, what we have here, for the most
13 part, is acreage with a master plan that confers dwelling
14 units to the entire master plan area, dwelling unit rights.
15 So you can't go and sell -- first of all, you don't have a
16 subdivider to sell; but, secondly, you right now don't have
17 any allocation between condominiums and single-family
18 residences. You don't have any definitive plan with what's
19 happening with a - (inaudible) - face, whether it's going
20 to be strictly skiing, whether it's going to be skiing and
21 homes.

22 I've done a lot of work where we have what's
23 known as a master plan development, and the master
24 developer develops what are known as super pads. And then,
25 in fact, you do have the type of sale we talked about where

1 you've got cross easements and CC&Rs. And you have a
2 master developer who's putting in the infrastructure but
3 can then sell off, and you can offer bids. If you, say,
4 have nine super pads, you can bid for one, you can bid for
5 two, you can bid for all nine. And it can be sliced and
6 diced because you have stand-alone entities with
7 contractual agreements as to how all the others are going
8 to be developed and what's going to be there.

9 None of that exists here. If somebody was to go
10 in -- there is no parts to buy. But if you were to buy
11 parts, what you really care about is what ultimately
12 happens on a - (inaudible) - on the ski lift. You
13 ultimately care -- the Warren Miller Lodge isn't finished.
14 You care whether it's finished out or not; and, therefore,
15 you've got to be able to control that.

16 This is not a situation -- there may be, there
17 may be a bunch of different business plans different buyers
18 want to adopt, and that's why there's nothing here that
19 restricts it. But you've heard a lot of people ask
20 hypotheticals about if somebody wanted to buy parts.
21 Nobody has ever shown me - and I don't really believe it
22 exists - any way you could sell any part of this
23 development -- other than, of course, you could sell the
24 lodge separate from everything else. It is on its own
25 separate condominium parcel. But otherwise, I don't think

1 there's any feasible way and certainly no feasible way to
2 get an interested buyer -- with just one other exception;
3 that is: We do right now have 37 subdivided lots. So
4 those 37 lots could be sold off separate from everything
5 else.

6 But other than that, other than that one, that
7 one item, there is no way to slice this up into multiple
8 buyers who could possibly pay more than what somebody's
9 going to buy for the whole.

10 Q. (By Mr. Ream) Would there be much interest in buying
11 the lodge if you couldn't use the ski lifts next to it?

12 A. I don't know. You would have to test the market.
13 There might be.

14 Q. Let's focus back to Paragraph M a little bit more
15 because I believe that His Honor asked a question where
16 Counsel answered a little while ago regarding: What if
17 Credit Suisse wants to bid?

18 Does Paragraph M address that? Because the judge was
19 concerned if -- that Credit Suisse had to come up with all
20 new money. How does Paragraph M address that question?

21 A. And, again, prior to submitting the original
22 procedures, I mean we wrestled with this as well as a lot
23 of things. I mean there's nothing in here that has not
24 been hotly debated and very extensively thought out. We
25 may not have gotten everything right and we may not have

1 thought of all permutations, but it's been a heck of a lot
2 of thought into trying to craft something that actually
3 would work in the real world.

4 What is provided here is that, assuming the Court says
5 Credit Suisse has the right to credit bid - and, again, I
6 think in this context, we would have been better to have
7 used the term "offset" - then what we say is that they get
8 to bid less an offset. And we say right there:

9 "For the portion of the cash component that would
10 be payable to Credit Suisse under the Plan, plus a note" -
11 and we've added - "substantially similar to the promissory
12 note in the amount equal to the Liquidating Trust's share,"
13 on the terms of the note.

14 And that is because what is going to be paid by a buyer
15 is going to be presumably cash in a note. That cash is
16 largely going to be -- again, if it's \$100 million, if
17 there's no overbid; if there's an overbid, these numbers
18 change. But at the \$100 million level, that cash is
19 largely consumed in repaying the DIP and paying some other
20 administrative expenses. The remaining cash is provided to
21 go to the liquidating trusts, subject to certain clawbacks
22 by Credit Suisse.

23 The note, which is the bulk of the value, will be
24 allocated between Credit Suisse and the liquidating trusts
25 based on the first priority and first amount going to

1 Credit Suisse and the full satisfaction of their secured
2 claim.

3 So what we say here is that Credit Suisse gets the
4 right to offset on their bid by the amount of cash they
5 would get in the sale at their bid amount; as well as the
6 amount of the note for which they'd be the beneficial
7 owner, they don't have to bid the amount of the note that
8 they would get to carry back. So all they'd have to do is
9 pay the differential in cash that would go to the
10 liquidating trust, and they'd have to put up the note -
11 because we're trying to give them the same rights as
12 everybody else - they'd have to put up the note only for
13 the amount that would otherwise go to the liquidating
14 trust.

15 So what we've done is we've given them the full offset
16 - which is what a credit bid tries to do, as best I can
17 tell - giving them a full offset for the full amount of
18 their secured claim against what they'd have to bid at the
19 auction.

20 THE WITNESS: And that was -- and, Your Honor,
21 that was in the original bid procedures, and it carries
22 through to this. I mean it's been there from Day 1.

23 Q. (By Mr. Ream) On a side note but related to
24 Paragraph M, His Honor asked Counsel if Credit Suisse were
25 to make the 1111(b) election whether or not the purchaser

1 would be deciding whether to return the collateral. And I
2 believe that Counsel gave an incorrect answer. What's the
3 correct answer?

4 A. I apologize for all my -- (inaudible.) I was trying to
5 get Counsel the -- I think that Counsel probably basically
6 misheard the question. No, the 1111(b) election -- which
7 again, our plan fully preserves 100 percent of their right.
8 And I think Mr. Chehi is right that people won't know how
9 to bid -- how to vote if their 1111(b) option is hanging
10 out there. And that's why the code provides that they must
11 make their election, every secured creditor must make their
12 election by the time the disclosure hearing is over, the
13 disclosure statement's approved. And that has to be for
14 people to be able to do exactly what Mr. Chehi said they
15 wouldn't be able to do if that wasn't decided by then.

16 But, no, the plan provides -- it fully protects and
17 preserves their 1111(b) right in the entirety. But what it
18 says is, is that if they elect the 1111(b), then the
19 debtor, not the purchaser at the -- not the purchaser at
20 the auction, but the debtor is the one that would then have
21 the right to decide whether to go forward with the plan as
22 drafted or to give them their full collateral back,
23 pursuant to their election.

24 Q. And then counsel for Credit Suisse argued that if the
25 debtor were to elect to give the collateral back, the plan

1 would not be feasible. Is that correct?

2 A. I actually think the plan probably ends up being more
3 feasible, but that's for a different day. I mean that --
4 there's no doubt they're a dominant creditor. There would
5 be nothing better, I think, for this estate than to satisfy
6 them out of their collateral. If that happened, there
7 would be no deficiency judgment.

8 The estate has a lot of other assets. The estate has
9 Farcheville, the estate has the lodge, the estate might
10 have 400 more memberships to sell, the estate has very
11 significant avoidance actions. I think if they actually
12 made their election and we gave them their collateral, that
13 everybody else would be paid in full and there's probably a
14 lot of money left over for equity.

15 Q. All right. Mr. Greenspan, back to -- if I could direct
16 your attention back to Exhibit C, the next page. The top
17 of the page is Paragraph N.

18 This is, again, a conforming change to consult with the
19 committee; is that correct?

20 A. That is correct.

21 Q. And the same change was made in 5(a)?

22 A. That is correct.

23 Q. And if we could turn, then, to --

24 A. And, again, those are all the auction procedures. It's
25 how the auction's conducted, it's at the auction. It's

1 deciding who's the beginning bidder, who's an overbidder,
2 and so forth. It will only be done with consultation with
3 all those parties.

4 Q. So the control issues, transparency? Is that what
5 those changes were made for?

6 A. Correct.

7 Q. And turning to the next page, Paragraph D, there are
8 numerous changes in that. Why don't we take these a little
9 bit at a time.

10 At the very top of the Paragraph D, there's a change.
11 What's the first change for?

12 A. The way this auction is designed, and many are, is that
13 you start with what is deemed to be the highest bidder.
14 And, again, that's a discretionary decision, hopefully
15 exercised properly. But we've changed it so that all three
16 committees will have input into the decision of what is the
17 highest and best offer in order to begin the auction.

18 Do you want me to just continue down, or do you want to
19 just --

20 Q. Yeah. Well, in the middle of the paragraph, there's
21 some additional considerations. How did those get in there
22 and why?

23 A. Again, I wouldn't necessarily put those there, but the
24 committee specifically asked that those provisions be put
25 in to, I think, give, I think from their perspective,

1 greater objectivity to the touch points that will be
2 considered in evaluating the bids. And we looked at those
3 and evaluated them and agreed that those were reasonable
4 items and that we would, in fact, include them as express,
5 if you will, transparent items that will be considered in
6 determining what is the highest and best bid.

7 Q. And then the final third of that paragraph there is a
8 change. What was that change for?

9 A. Well, again, then just before you get to that, again,
10 in just even determining who's the winning bidder, it's
11 going to be done in consultation.

12 Towards the end -- and, again, you've heard it today
13 that people may want parts and pieces. And Credit Suisse
14 in particular suggested that a bidder might want and might
15 find some synergies in the other assets owned by the
16 debtor. And Credit Suisse requested that we make available
17 the other assets to be bought in combination.

18 THE WITNESS: Again, kind of what you've heard,
19 Your Honor, this morning, about -- or this afternoon about
20 kind of the picking and choosing and assembling.

21 And so there are some discrete assets. And to
22 the extent a bidder does want to bid on those and does want
23 to condition their bid as being a valid bid only if, in
24 fact, they are the successful bidder on all of those
25 assets, we've made that the provision. We always were

1 going to include those assets in those deal room, the
2 electronic data room, and those are now specifically
3 included in the data room so that a bidder can bid on all
4 or in part.

5 Q. (By Mr. Ream) And that was a request made specifically
6 by Credit Suisse?

7 A. And they're the only ones that made that request.

8 Q. Did you read the Credit Suisse objection to these
9 revised bidding procedures?

10 A. Yes.

11 Q. And did you read that they allege that the debtors and
12 you did not negotiate with them in good faith?

13 A. Yes.

14 Q. Is that accurate?

15 A. I don't think so.

16 Q. And why don't you think that's accurate?

17 A. Because immediately after the hearing, I mean before we
18 even had an order, Credit Suisse had obviously expressed
19 some objections.

20 THE WITNESS: And so I went to Credit Suisse
21 before we had your order and asked them to, please, you
22 know, go through and enumerate what their objections are,
23 what are the issues that we could look at even if -- quite
24 frankly, even if you had signed the order, I'd deal with
25 their objections and their issues as best I could.

1 And they, in fact, did provide us a list. You
2 know, the Skadden papers say they first heard about it on
3 the Saturday and had to file it on Monday. I actually went
4 to them immediately after the hearing and, in fact,
5 received from them a list of issues. Before you even
6 entered your order, I received a list of issues, I think,
7 on the Saturday before, a week before that. And I
8 attempted to incorporate as many -- and I think I
9 incorporated virtually all of their comments at that stage
10 into the revisions.

11 Then, again, we also talked to them and then
12 subsequently provided them a revised document and asked for
13 their comments on the revised document itself. And I
14 apologize to everybody for - and the Court included - the
15 short timing. I mean the fact is: Something gets filed at
16 midnight last night only because we're working up until the
17 time it gets filed.

18 This is, this isn't the way we'd like to do it,
19 but this is really a rocket docket. And we've got a whole
20 bunch of people we're trying to please, and we're doing our
21 darndest to deal with them to incorporate and also deal
22 with, frankly, the litigation environment.

23 Q. (By Mr. Ream) So that communication of issues from
24 Credit Suisse, that was made to you in writing; is that
25 correct?

1 A. Correct.

2 Q. And would you turn to Exhibit A, please?

3 A. I have it.

4 Q. Do you recognize Exhibit A?

5 A. Yes.

6 Q. And what is Exhibit A?

7 A. Exhibit A is the e-mail that Mr. Yankauer sent to me.
8 I think I called him on the Friday -- we had our hearing, I
9 think, on Wednesday, or so; flew back on Thursday; and I
10 called him on Friday, I believe, to talk to him about the
11 bidding procedure issues and their concerns. And he sent
12 me this e-mail the next day, on Saturday.

13 Q. And who's Mr. Yankauer?

14 A. Mr. Yankauer is the point person for the agent on the
15 credit.

16 Q. You mention that you reached out to Credit Suisse and
17 then attempted to incorporate Mr. Yankauer's concerns in
18 what is the revised bidding procedures, correct?

19 A. Yes.

20 Q. Did No. 1 of Mr. Yankauer's concerns make it into the
21 bidding procedures, the revised bidding procedures?

22 A. I believe in a number of ways, No. 1 did make it in.
23 To the extent what, to the extent what Credit Suisse wants,
24 which is -- I can best describe it is kind of a rugby
25 scrum, and that is just anybody can make an offer on

1 anything, in any way, in any combination. That would be a
2 disaster both in trying to get people to the table as well
3 as then trying to deal with what they put forward.

4 But other than just abandoning the concept that there
5 is a defined structure to how you're going to make offers,
6 other than sticking with that, we went as far as we could
7 to change the other terms with -- that the other assets of
8 the debtor can be included, the amount of the note could go
9 up by 50 percent.

10 And, of course, they can pay all cash, too. The note's
11 not mandatory. The note is simply an effort to try to get
12 higher prices and higher values as well as modifying the
13 terms so that they do not have to live exactly with that
14 note and they do not have to live exactly with the
15 contract, you know, what's been known as the definitive
16 agreement.

17 Q. So there isn't unlimited potential for investors to
18 offer different structures, but there were changes made to
19 allow different structures, correct?

20 A. That is correct.

21 Q. Was everything that Mr. Yankauer asked in this
22 paragraph included in the revised bidding procedures?

23 A. I'm sorry, I didn't understand the question.

24 Q. Let me be more specific. Did you agree that the
25 debtors should terminate exclusivity as part of the bidding

1 procedures?

2 A. No, I did not.

3 Q. All right. Regarding Paragraph 2 --

4 A. Yes.

5 Q. -- were any changes made consistent with this request
6 by Mr. Yankauer?

7 A. Yes. Credit Suisse is the only one that made this
8 request, and we adopted it wholesale. He was concerned
9 that people might want other assets. And so we've opened
10 it up so that you can buy some or all of the assets, and
11 you can condition your bid upon getting all of the assets
12 if that's the only way you want any of them. So I believe
13 I accepted his comments in toto.

14 Q. Well, when we refers to, quote, Yellowstone Club World,
15 what assets or what change was made in the bid procedures
16 regarding the Yellowstone Club World?

17 A. Well, as he specifically states there, the debtor, the
18 debtors own 100 percent of the stock in nonfiled
19 subsidiaries that -- again, if you further subsidiaries,
20 one owns property in St. Andrews, Scotland; and the other
21 owns the Chateau Farcheville.

22 So to the extent the buyer is interested in buying
23 Yellowstone Club in Montana and only wants those other --
24 only wants it if they can buy those other properties, they
25 can bid that way; or, frankly, if they just want to buy

1 Scotland or just want to buy Farcheville, the procedures
2 also allow that, as well.

3 Q. What about Paragraph 3? Did you make any changes to
4 the bid procedures proposal for Paragraph 3?

5 A. No, I did not. And what that is saying is, is that the
6 procedures only allow cash - (inaudible) - debt, but
7 there's other types of permutations such as warrants other
8 potential upside that might enhance recoveries. And I did
9 not make any changes to accommodate that.

10 Q. Did you accommodate any of Mr. Yankauer's concerns
11 regarding Paragraph No. 4?

12 A. Yes, I did.

13 Q. What were those?

14 A. And that is what was -- he was concerned that we would
15 not allow a carryback paper more than 70 million. We
16 increased that that by a full 50 percent, up to
17 \$105 million. And then I think he actually just has a typo
18 in the next line where it says: "A purchaser paying a
19 big price with low leverage would be precluded."

20 It's just the opposite: A purchaser paying a big price
21 with low leverage is encouraged.

22 But, in fact, we are trying to preclude big-price
23 purchasers with big leverage. That's not, in this world, a
24 feasible, realistic way to go about any real-estate
25 development, particularly one that, frankly, is as

1 speculative as this one. And I can't endorse as feasible
2 and as a reorganized debtor high price, high leverage.

3 Q. When you say "high leverage", how does that affect
4 feasibility?

5 A. Well, the higher the leverage, the greater the chance
6 of a subsequent reorganization and a failure. It does two
7 things: It, No. 1, increases the annual debt service that
8 has to be paid; and then obviously secondly, it also
9 increases the amount that has to be generated from the
10 project in order to repay that encumbered debt.

11 The other thing is, is that if you want to keep this
12 process, and for lack of better words, I'll call it
13 "honest", you need to limit the amount of debt. If
14 somebody can bid relatively little cash and the rest paper,
15 you've essentially just created an option. You've created
16 a situation where someone puts the money down, speculates
17 on the market change, speculates on being able to re-flip,
18 or something, and then can walk away. Because on all of
19 these terms, these notes are not in recourse to the
20 ultimate buyer. And so, consequently, if you don't require
21 a meaningful amount of cash, you cannot have big price, big
22 leverage without just opening yourself up to be back here
23 again in a year or two years.

24 Q. So without limit, you could have a \$200 million offer
25 at \$10 million cash and \$190 million in leverage?

1 A. If you do not restrict the amount of leverage, that is
2 exactly what you could have. And then you're in the
3 situation at the auction and dealing with the multiplicity
4 of constituencies trying to say -- if somebody else bid
5 180 million with low leverage and somebody bids 200 million
6 with high leverage, how do you really evaluate those two as
7 to what's better for the members, the vendors, Credit
8 Suisse, and every other constituency involved? And you
9 would have, quite frankly, a vast difference of opinion.

10 The same thing -- one of the reasons why I said "no", I
11 don't believe warrants or equity kicker are going to the
12 constituencies. The value of those warrants and equity
13 kickers are going to depend strictly upon the projections
14 you use. And I guarantee you, if we have 5 bidders and 6
15 parties here, that's 11 different entities. We're going to
16 have 12 projections. I mean nobody's going to come eye to
17 eye on projections. And that's fine. That's what makes
18 bidders and buyers and sellers. But for us to try to
19 reconcile those and actually say what leads to highest and
20 better in this environment I think would be an impossible
21 task.

22 Q. How did you address Mr. Yankauer's concerns in
23 Paragraph 5?

24 A. What he says is that the note terms were not specified.
25 In fact, that was absolutely correct when we were here with

1 the bidding procedure before. And that's been remedied.
2 Not only do we spell out in the order the major terms of
3 the note, but we've attached a copy of the proposed note to
4 the disclosure statement.

5 Q. You've heard some argument of counsel regarding the
6 note rate, 5 percent above LIBOR. How does that affect
7 value, in your opinion?

8 A. Well, I suspect there's going to be an ongoing fight as
9 to whether that's -- those are market terms or not market
10 terms; however, the fact is - and I think every one of the
11 valuation people and every one of the appraisers will tell
12 you - the very fact that we're offering a note here is
13 likely to -- it certainly will not result in a price less
14 than market value and is likely to result in a price higher
15 than market value. Because market value is an all-cash
16 purchase and sale.

17 And so to the extent you're inducing buyers with
18 leverage, and particularly if you're inducing buyers with
19 leverage on a note they can't get out in the market, which
20 this may or may not be, but to the extent that is, then
21 you're actually generating for the parties a higher nominal
22 price. And so the issue of whether, whether the note bears
23 a market rate of interest or not may have something to do
24 with confirmation ultimately. But, if anything, if Credit
25 Suisse is correct in the papers they just filed that the

1 note actually is below market rate of interest, it's
2 actually going to induce a higher than market price paid
3 for the assets.

4 Q. In Paragraph 6, Mr. Yankauer makes reference to his
5 concerns about qualified alternative bidders having to put
6 up additional collateral. That was resolved, wasn't it?

7 A. Again, it was resolved by taking it out. Again, I
8 continue to believe that's a mistake, but they asked for it
9 and the committee asked for it, so we took it out.

10 Q. And what about Mr. Yankauer's concerns in No. 7?

11 A. Well, again, the major concern there was that they did
12 not know what the terms of the definitive agreement is.
13 And we have -- or are, I apologize -- we've -- it wasn't
14 done then, but we wanted to get the marketing process
15 started.

16 And so we've now concluded that, and we've attached it.
17 So the issue that it's no longer, no longer disclosed, of
18 course, is not the case. And what we've done in the
19 bidding procedures order itself is changed the language to
20 basically be substantially similar to give modification
21 opportunity that we are not holding anybody to those exact
22 terms.

23 And then, secondly, I think we very well may -- you
24 know, it was all these documents. I mean if this was a
25 collusive situation, we would have had documents to you two

1 months ago. Every one of these documents have continued to
2 be negotiated for 60 days or 45 days up until last night.
3 So these were negotiated documents. And we've tried to
4 make them documents that both give the estate sufficient
5 rights but also are attractive enough to a prospective
6 buyer that the buyers are not dissuaded from participating.

7 I mean I could, I could have a killer document for the
8 estate, but all it does is depress the value these people
9 want and keeps the bidders away. The flip side is: If
10 it's too good for the bidder, the allegations are going to
11 be it's a sweetheart deal with CrossHarbor.

12 The reality is: Every single bidder is being offered
13 -- to the extent it's a good deal for CrossHarbor, every
14 other bidder is being offered that or better through the
15 document.

16 Q. Finally, what about Mr. Yankauer's concerns with the
17 capital structure set forth in Paragraph 8?

18 A. And, again, we're -- anybody who buys it, heaven help
19 them with their business plan. I mean they can have
20 whatever business plan they want. We've looked at a number
21 of different models. What we did in the disclosure
22 statement is, is -- my model doesn't agree with
23 CrossHarbor's model. We put in two different models
24 because one reflects what the bidder believes -- the
25 stalking-horse bidder believes is the right way to look at

1 it and the way they value it; there's another that is mine
2 and the debtors' perspective. Any other bidder could have
3 any other perspective.

4 I've yet to see a model or a concept that does not
5 require very substantial working capital. And, also, if we
6 are proposing a reorganized debtor and we're proposing that
7 the creditors and Credit Suisse, and so forth, stake their
8 recovery out of this estate upon the ability to continue to
9 service the debt and prosecute the development, we owe it
10 to them and we owe it to the creditors and we owe it to the
11 members to ensure that there's sufficient capitalization.

12 And I've tried to walk the line. There's a lot of
13 arguments that it should be more than 75 million. I have
14 yet to see any argument that it should be anything
15 meaningfully less than 75 million. But we did change the
16 language so that if somebody proposes a capital structure
17 that indicates that you need less than 75 million, that
18 then they can go ahead and bid, and that will be evaluated,
19 and they can bid with less than a \$75 million commitment.

20 So we've attempted to accommodate it. Again, we can
21 spin out whatever hypotheticals we want. It's going to
22 require darn close to 75 million, if not more, capital.
23 And so we can talk about, "Yes, we'd like more
24 flexibility." We've built in flexibility, but we want a
25 successful reorg, not a 22.

1 Q. You then communicated with Mr. Yankauer after the bid
2 procedures were revised, is that correct, and gave him an
3 opportunity to comment on the revised bid procedures?

4 A. I believe, I believe we sent them to them.

5 Q. And when you heard back from Mr. Yankauer, what did you
6 hear back?

7 A. I don't -- I mean I don't -- I'm long beyond being able
8 to recollect specific conversations.

9 Q. All right. At least as to the eight provisions in his
10 communication of February 14th, though, substantially all
11 of them were included; is that correct?

12 A. I believe so.

13 Q. All right. You mentioned this actually just a minute
14 or two ago: Is CrossHarbor controlling this Chapter 11
15 process?

16 A. I certainly don't believe so.

17 Q. Is CrossHarbor controlling the revised bid procedures?

18 A. No.

19 Q. Is CrossHarbor dictating to you what terms you're
20 agreeing to and what you're not going to agree to?

21 A. They are -- and I take offense to the term "dictate".

22 They are the other party to the contract, so nothing --

23 there's nothing hidden or secret about this: There's

24 nothing in that contract they don't ultimately agree to.

25 And there's nothing that -- therefore, if you want to use

1 the term, there's nothing in that contract they don't
2 insist upon as ultimately a bottom line.

3 The deals, the terms, these bidding procedures, and
4 everything else don't look anywhere close to what they
5 started with or, frankly, what I started with. This has
6 been a long, negotiated process.

7 It has resulted in mutual agreement. Ultimately,
8 that's what you need in order to get any document and deal
9 signed; and, frankly, quite -- and it also includes now
10 mutual agreement from the unsecured creditors committee. I
11 mean, again, they haven't dictated terms here any more than
12 CrossHarbor has. Certain changes were needed in order to
13 induce their consent. But I don't believe they or anybody
14 else are dictating -- any more than I'm dictating the
15 terms. I mean these terms are only there if we can get all
16 the parties who have to sign on to sign on.

17 Q. And so would you characterize it as an arm's length
18 negotiation, then, between you and the committees and
19 CrossHarbor?

20 A. I certainly believe so.

21 Q. Has any entity other than CrossHarbor expressed any
22 interest in stepping forward to be an alternate stalking
23 horse in this matter?

24 A. No.

25 Q. Any expressions of interest?

1 A. Well, there's been a number of parties who expressed an
2 interest in Yellowstone Club, but nobody has moved forward
3 to the point of even talking about making a commitment. I
4 mean we're talking about a binding commitment to put up a
5 lot of cash and take this subject to a note. Nobody else
6 has expressed a commitment to do that at any number.

7 Q. His Honor has expressed concern regarding the debtor
8 somehow attempting to take away Credit Suisse's credit bid
9 rights. You've already testified that that is absolutely
10 not the intent of the debtors. Then why is this plan
11 structured as an equity sale instead of an asset sale where
12 they could credit bid?

13 A. Two reasons is, is -- one: I believe and everybody
14 I've talked to believes that being able to convey this
15 asset with a reasonable understanding, a group of
16 memberships intact is the way to maximize value and is the
17 only way to get the consent of the unsecured creditors
18 committee, the ad hoc committee.

19 So to the extent we are looking for a consensual
20 process, the only way to do that is through a process that,
21 in fact, spells out and assumes the membership agreements,
22 at least the -- what we'll describe as the normal
23 membership agreements, which is what our plan provides for.
24 Going out in an unencumbered 363 sale can never achieve
25 that.

1 And try to picture the concept of getting -- I mean
2 we -- and, again, this will be -- there's other things that
3 aren't in here, but in response, I mean everybody's wanted
4 the broadest marketing process possible. I've expressed
5 some reservations about a total broadcast. But, again,
6 basically listening to what's been -- what everybody said,
7 is I told Coldwell Banker to go ahead -- or CBRE to go
8 ahead and do the very broadest broadcast they have, which
9 is 18,500 qualified entities and institutions.

10 THE WITNESS: You can only imagine, you know, in
11 the, in the first day -- and from the day you signed your
12 order, they've been working. I mean don't let anybody tell
13 you to the, to the contrary. Between site inspections,
14 doing the memorandum, getting the teaser in order putting
15 together the logistics of handling the responses now has
16 taken two weeks. And that's why they -- whenever I talk to
17 them about their marketing period, they believe their
18 marketing period started the day we gave the go-ahead.

19 Just handling what's now going to happen -- and
20 if you layer onto that that if there's no agreement with
21 members, there's no structure as to what's happening with
22 members, you're going to suddenly have 40, 50, 60, 100
23 different buyer groups on the property trying to approach
24 and, quote, make a deal with members that they are going to
25 presumably do post-confirmation whether the membership

1 agreements are rejected or accepted.

2 No buyer can just walk into that structure and
3 then try to make heads or tails and try to make -- what
4 we're looking for is north of a \$100 million commitment
5 investment. Now, this isn't somebody taking a flyer on
6 this; this is somebody that's going to do a massive amount
7 of due diligence and is going to commit huge resources. So
8 I don't believe that, unless you give them a structure they
9 can step into -- and, again, we've tried to modify it or
10 round the edges so they can change the definitive
11 agreement, they can change the terms of the note. But
12 unless you get a structure that involves a way, for
13 example, to ensure that the member agreements are assumed
14 -- if they buy the asset and might reject the member
15 agreements, then there's a whole other issue; or if they
16 buy, then, and they don't honor the member agreements,
17 we're back to a point of adequate assurances. If they buy
18 the assets out of the estate, how do I show adequate
19 assurance that I can perform on the member agreements?
20 Because I no longer control the assets.

21 So then we walked through the issues of: How do
22 you actually get buyers to the table and to perform?

23 And then, secondly, when you actually walk
24 through what's involved in bankruptcy claims, which is what
25 the member agreements are, and the acceptance or rejection,

1 we came to the conclusion - and I still believe it - that
2 the only way to have a really robust process is through a
3 plan equity process. And that, in fact, what somebody is
4 going to bid for the plan equity will far surpass what
5 they're going to bid for the 363 assets where there is no
6 member tails that go along, where there is no membership,
7 cohesive membership. And I said, also, we would never get
8 consent. I don't think we'd consent from the committee and
9 we'd never get consent from the ad hoc members committee to
10 do a process like that.

11 So I do think that it's both necessary if we're
12 going to get to a confirmed plan as well as a way to
13 maximize the value of the assets we're trying to sell. And
14 that is to do it through a tidy unit but people know where
15 it's going, rather than have rejection or acceptance of
16 memberships and simply the unencumbered assets being sold
17 off.

18 Plus, you then have the second issue of: We've
19 got both collateral and noncollateral. And I, frankly,
20 have never seen a 363 sale where those have been bundled
21 together. I don't know how you would approach that sale.
22 I'm not sure what you do about a credit bid. And I'm not
23 sure what you do if one person comes in and says, "I'm
24 willing to pay more for just one than the other," and then
25 what the estate does with what's left over.

1 Q. (By Mr. Ream) Does a \$300 million credit bid chill
2 bidding?

3 A. I'm sorry you didn't ask CBRE when they were here. I
4 certainly think the prospect of a credit bid is usually
5 believed to chill bidding. And, again, let's -- by "chill
6 bidding", I mean that seems to have bad connotations.
7 Let's separate out the -- does it improperly chill bidding?
8 No. I mean they're entitled to credit bid under the code.

9 Does it diminish potential interest? Yes. But I mean
10 that's the same thing with the fact that CrossHarbor's been
11 involved in the property for the last year and a half. We
12 talk about it chilling bidding. It does dissuade some
13 people. Is it improper chilling? No, it's no more
14 improper chilling than their right to credit bid.

15 It does affect market perceptions, and so does the
16 capacity of somebody without putting up any new cash to
17 come in and overbid every other bid up to 310. But I -- we
18 didn't try to take away that right of theirs, we're not
19 trying to take it away now. As I said, we will, we'll
20 agree that if the Court determines they have a secured lien
21 in a particular amount or in an amount up to the face value
22 of, of their note, we've provided for a mechanism that, I
23 think, effectively gives them the full equivalent of credit
24 bid through offset rights and an equity bidding process.

25 Q. Do you recall from the judge's memorandum decision that

1 he said he wanted bidding procedures that didn't overly
2 favor CrossHarbor or Credit Suisse?

3 A. Yes.

4 Q. The revised bidding procedures, in your opinion, do
5 they overly favor either CrossHarbor or Credit Suisse?

6 A. I don't believe so.

7 Q. Lastly, what would delay -- what are the consequences
8 of delay from today? If we don't move forward with CBRE
9 and these bidding procedures, what's the real practical
10 consequences?

11 A. Well, we've got CBRE moving immediately, and I think
12 they are going to continue to move immediately. But what
13 we are -- because we do have a limited window here, is that
14 they are going to have to be more specific -- well,
15 actually, well, there's two things: If we don't move
16 forward with the bidding procedures, then we obviously
17 don't have a stalking horse, and that creates whole other
18 different issues with the estate as far as funding and as
19 far as certainty; and, secondly, if the world knows we
20 don't have a stalking horse, then you start having the
21 prospect of the people coming in -- everybody wants to come
22 in and take a shot at a \$25 million offer thinking maybe
23 nobody else will show up.

24 So I mean that's -- there's real legitimate reasons why
25 you have a stalking horse both for this estate and in

1 general. But beyond that, very soon CBRE has to move
2 beyond describing what somebody is buying in the tangible
3 sense and telling them the structure by which they're going
4 to buy it. And that's really probably going to have to be
5 done before most people start their due diligence. They're
6 not going to spend the six figures necessary to
7 appropriately due-diligence this deal unless they
8 understand the road map of if they spend the money and if
9 they are the prevailing -- and what are they going to be
10 bidding on? How are they going to be bidding? And what's
11 going to determine whether they're the prevailing bidder?

12 And it's only by having bidding procedures in place
13 that we get there.

14 MR. REAM: If I could have a moment, Your Honor.

15 THE COURT: You may.

16 MR. REAM: One final small area -- sort of small,
17 Your Honor.

18 Q. (By Mr. Ream) Mr. Greenspan, over the break, did you
19 have some negotiations with CrossHarbor regarding the
20 potential of a short continuance of both the auction
21 deadline and the confirmation deadline if we can be moving
22 forward on these bid procedures?

23 A. Yes.

24 Q. And what were those negotiations?

25 A. Well, the negotiate -- I mean the genesis of the

1 negotiations is to give more time as well as, given now
2 what looks like a trial schedule -- because there are a
3 number of issues that necessarily need to be resolved, I
4 believe, before we can have the auction and know what
5 everybody's rights are within that auction that --
6 CrossHarbor agreed that if we can get bidding procedures
7 done and if we -- if this process is actually moving
8 forward, that they would extend all the deadlines by 21
9 days, that we'd get yet -- so instead of, basically, it
10 being the end of April, we're looking at -- we push back
11 the auction by about three weeks, and we could push back
12 the plan confirmation and all the other steps three weeks.

13 So instead of being the end of April, we'd be -- or the
14 plan approval, instead of it being the end of April, we'd
15 be looking at somewhere around the 20th of May for
16 confirmation and then hopefully a closing that's quickly
17 thereafter. There's still funding issues we've got to deal
18 with on that. We only have a budget through April. But
19 assuming we can get through the funding issues, they've
20 agreed to extend by another three weeks.

21 MR. REAM: I have no further questions, Your
22 Honor.

23 THE COURT: Who wishes to go first?
24 Mr. Saunders?

25 MR. SAUNDERS: I'd love to, Your Honor. I don't

1 know what Your Honor's practice is in whether you have a
2 time in mind for an afternoon break or --

3 THE COURT: I'm having trouble hearing you.

4 MR. SAUNDERS: I don't know what Your Honor's
5 practice is in whether you have a time in mind for an
6 afternoon break or if you just want to plow through. But
7 I'm happy to keep going.

8 THE COURT: Let's proceed.

9 CROSS-EXAMINATION

10 BY MR. SAUNDERS:

11 Q. Mr. Greenspan, I think you testified that one of the
12 downsides of permitting a bidder to propose a low cash/high
13 note combination is that, essentially, it would be giving
14 that bidder an option; is that right?

15 A. Well, the -- if they prevailed and put down very little
16 cash, that, in essence, is just an option, yes.

17 Q. Okay. And that would be a bad thing, right?

18 A. I believe it's a bad thing for a reorganized debtor and
19 for the community.

20 Q. Okay. There is no executed definitive agreement with
21 CrossHarbor, right?

22 A. Right now there isn't, but when we have approved
23 bidding procedures, I understand there will be.

24 Q. Okay. But CrossHarbor hasn't signed anything and
25 they're not contractually committed to anything at this

1 point, right?

2 A. Nor is the debtor.

3 Q. Sure. But CrossHarbor is not, correct?

4 A. Correct. I'm sorry, correct.

5 Q. Okay. So if the world changes tomorrow or their
6 opinion of things change tomorrow, they can -- even after
7 the bidding procedures are approved, they're not obligated
8 to do anything, right?

9 A. That is correct.

10 Q. Okay. And even if you were to sign up, even if the
11 bidding procedures were to be approved and you were to sign
12 up the definitive agreement in the form that's been filed
13 with CrossHarbor, there is a liquidated damages provision
14 in that definitive agreement that would cap the debtors'
15 remedy in the event of any CrossHarbor breach at
16 \$5 million, right?

17 THE WITNESS: Again, Your Honor, this is my
18 point.

19 Yes, I had it at 10 million so it was meaningful.
20 Your client and the committee asked that it be reduced.
21 So, yes, it is only 5 million, but not out of my choice.

22 Q. (By Mr. Saunders) Okay. Well, let's be perfectly
23 clear about what we're talking about. I'm not talking
24 about the deposit that's required or the letter of credit
25 that's required under the bidding procedures. Okay?

1 Because that doesn't apply to CrossHarbor anyway,
2 right? They're exempted from that requirement, right?

3 A. No, because we --

4 Q. Well, let's take one.

5 A. I'm sorry, no, they're not. They have right now about
6 10 million up that will be an admin claim. They'll have
7 about 20 million in the DIP. And so we have the right to
8 offset against that. Just like Credit Suisse doesn't have
9 to put up any new money, they would be subject to the same
10 penalty just like CrossHarbor, just like any new bidder.
11 So the penalty they'll be subject to - because they've got
12 real cash up - is exactly the same and it carries through.

13 Q. Okay. Could you take a look at the red-lined version
14 of the bid procedures that's Exhibit C --

15 A. Yes, sir.

16 Q. -- in the set of exhibits you already have?

17 A. Yes.

18 Q. Okay. Now, the introductory language on page 2 at
19 Section 4 for qualified alternative bid, do you see that?

20 A. Yes.

21 Q. Okay. It says: "An Alternative Bid will qualify for
22 consideration only if the Alternative Bid is a 'Qualified
23 Alternative Bid.' To be a Qualified Alternative Bid, the
24 Alternative Bid shall either be submitted by Purchaser" -
25 which is CrossHarbor - "or must."

1 So all of the things that follow are requirements that
2 apply only to people other than CrossHarbor, right?

3 A. Correct.

4 Q. Okay. So including, for instance, the requirement in
5 Subparagraph F that an alternative bid be accompanied by a
6 cash deposit or a letter of credit in the amount of
7 \$5 million? That Subparagraph F requirement does not apply
8 to CrossHarbor, correct?

9 A. It does not apply to CrossHarbor or Credit Suisse, that
10 is correct.

11 Q. Okay. And under the form of definitive agreement,
12 okay, that you've filed, there is a liquidated languages
13 provision, okay, that provides the sole and exclusive
14 remedy to the debtors in any event that CrossHarbor were to
15 breach that definitive agreement, right?

16 A. Yes.

17 Q. Okay. Liquidated damages of -- capped at \$5 million,
18 right?

19 A. And that is why "F" doesn't apply to them because it's
20 in their -- it's in the definitive agreement.

21 Q. Okay. So if you were to sign up the definitive
22 agreement and we went down this path, and 45 days from now,
23 whenever it is, CrossHarbor decided the world had changed
24 and it no longer wanted to go forward with this transaction
25 - it had no contractual basis to refuse to go forward but

1 it just decided it didn't want to - it would be entitled to
2 give you \$5 million and walk away, and that would be it,
3 right?

4 A. And I spent weeks negotiating them up to 10 million and
5 then, at your request, lowered it to 5 million.

6 Q. Okay. In the definitive agreement, the liquidated
7 damages provision is \$5 million, right?

8 A. Yes.

9 Q. Okay. Now, what is the purchaser or who is the
10 purchaser under the definitive agreement?

11 A. It is CrossHarbor Capital, and it can be a permitted
12 assignee that they control.

13 Q. Well, isn't it true that the actual purchaser, the
14 party to the form definitive agreement is New CHYMC
15 Acquisition, LLC?

16 A. I'm sorry, yes, correct.

17 Q. Okay. CrossHarbor Capital Partners is not proposed to
18 be a party to the definitive agreement, right?

19 A. I believe you're correct.

20 Q. Okay. Do you know whether New CHYMC Acquisition, LLC,
21 even exists?

22 A. I personally don't have knowledge of that.

23 Q. Okay. You've never seen Delaware documentation or
24 documentation from any other state that shows that that LLC
25 actually exists?

1 A. At this stage, I have not.

2 Q. Okay. Have you been given any information about how
3 New CHYMC Acquisition, LLC, is capitalized, if at all,
4 whether it has any assets or any money?

5 A. I am advised they have commitments for capital.

6 Q. Okay. Commitments for capital by people who are not
7 parties to the definitive agreement?

8 A. Correct. The only parties to the definitive agreement
9 are the debtors and that entity you've just described.

10 Q. The shell?

11 A. The buyer.

12 Q. Okay. The shell, New CHYMC Acquisition, LLC, right?

13 A. I don't know if it's a shell or not.

14 Q. Okay. So as far as you know, if we go down this path
15 and the bidding procedures are approved and the definitive
16 agreement is signed up, and in 45 days, New CHYMC
17 Acquisition, LLC, says, "The world's changed. We no longer
18 wish to go forward with this, we breach the contract. We'd
19 like to give you \$5 million, but we don't have \$5 million,"
20 the debtors are out of luck, right?

21 A. I believe, and I would go so far as to say I'd make it
22 a requirement if it's not already there, that the entity
23 which is yet - (inaudible) - a specific entity, the entity
24 that's providing the DIP financing would agree that the DIP
25 that they've advanced, that 5 million of that DIP is the

1 liquidated damages that they -- there's no intent here that
2 anybody have a free look or a free walk.

3 Q. Okay. But that's the current situation, right?

4 A. As I just said, if that is a shortcoming of the
5 documents we have, I would insist upon that that entity
6 that is the DIP lender agree that 5 million of the DIP be
7 at risk for the breach of the buyer. I'm viewing them --
8 and I think you pointed up a good point, is - which
9 nobody's ever mentioned before, but thank you for doing it
10 - is that there should be -- that I'm viewing them as, as
11 similarly liable. And that should be explicit.

12 Q. Okay. Now, you made, you made some reference in your
13 testimony to the Warren Miller Lodge. Do you recall that?

14 A. Yes.

15 Q. Okay. You don't have any professional opinion as to
16 how much the Warren Miller Lodge is worth, right?

17 A. I personally do not.

18 Q. Okay. How many residential units are there in the
19 lodge left to be sold? Do you know?

20 A. Two.

21 Q. Okay. And do the operations of the lodge run at a loss
22 or a gain?

23 A. Well, one of the reasons we've asked for substantive
24 consolidation or are proposing substantive consolidation
25 between YMC and YDC, or "YDI" as we call it, is because

1 they've essentially been operated as one. You can't tell
2 right now if the lodge runs at a profit or loss because I'm
3 not sure what the lodge is. When you say, "Does the lodge
4 operate at a profit?" what is "the lodge"?

5 There's food service operations in there. I can tell
6 you who makes the payroll on it, but there's no rent paid.
7 There's the ski shop, there's a gym. There's no rent paid
8 for any of those. I can tell you who pays the employees on
9 those. And there's no revenue generated there, either.
10 You have member dues that are paid in, which are not
11 specifically allocated to the lodge or anyplace else.

12 So I don't think that's -- as it's presently operated,
13 I don't think it's susceptible to answering the question of
14 whether the, quote, lodge operates at a profit or loss.

15 For example, they don't charge anybody to park there.

16 Q. Okay, right. So it sounds like it would run at a loss,
17 right?

18 A. I'm sorry?

19 Q. Just providing all these things and not charging
20 anybody, right?

21 A. No. Every consumable is charged through to a member.
22 But my question is, is: Who's actually providing that food
23 service from a, quote, lodge standpoint?

24 When you say "the lodge", the lodge is not a -- there's
25 no, there's no separate legal entity that's the lodge;

1 there's no, there's no journal that says: Here's the lodge
2 journal to look at.

3 So that's what I'm saying. I don't think, I don't
4 think that's an answerable question. I'm not sure it even
5 is a question. It's not an answerable question as to
6 whether the lodge makes money or loses money.

7 Q. Okay. And the lodge is unfinished; is that right?

8 A. That's correct.

9 Q. Okay. I want to ask you about credit bidding. If you
10 could take a look again at the black-line that you
11 testified about. Footnote 2 on page 3, do you see that
12 footnote?

13 A. Yes.

14 Q. It says (quoted as recorded): "By including this
15 provision, the debtors are not conceding that Credit Suisse
16 has the right to credit bid with respect to the plan."

17 Do you see that?

18 A. Yes.

19 Q. Okay. Am I correct in understanding that, from your
20 direct testimony, that the debtors are now willing to do
21 that?

22 A. Well, yes.

23 Q. Okay.

24 A. With respect -- the debtors are certainly willing to do
25 it subject to what's within our power to confer. I mean

1 the Court, the Court is the one who, I think, ultimately
2 has to make a decision as to whether they can or not. But
3 from the debtors' perspective, we're not and, frankly,
4 never have contested the right to make a credit bid.

5 Q. Okay. When did you decide that it would be in the best
6 interest of the process for the debtors to concede that
7 Credit Suisse had the right to credit bid?

8 A. When we took the break and I sat and I watched what
9 happened in the morning and said -- just like, to me, the
10 golf course lots -- people appear to be making a huge issue
11 claiming that there's an infirmity in these procedures over
12 something that we actually tried to affirmatively include.
13 I mean we specifically brought up that if the Court allows
14 you to credit bid, and we laid out how we thought the
15 process could possibly work. And we further went on and
16 said that Credit Suisse, if they're bidding, don't have to
17 put up their own 5 million because they already have more
18 than that in. And we said, "You don't have to qualify as a
19 bidder even though the agent group that you represent
20 couldn't come up with the DIP money." I mean there's no
21 showing of financial capability of your entity as opposed
22 to Credit Suisse itself.

23 So what I said is -- at the break to the counsel and
24 everybody else, is I said, "Everybody appears to be making
25 an argument that we're trying to stop credit bidding.

1 Let's just come in and say specifically that Debtor is not
2 taking that position, hasn't taken the position, and
3 affirmatively say, 'Yes, as far as we're concerned, credit
4 bid.'" But we're not dispositive on that issue. The Court
5 is and the unsecured creditors committee is challenging
6 that right.

7 Q. Let's take a look at the Exhibit A that is the e-mail
8 from Mr. Yankauer that you testified about.

9 A. Yes.

10 Q. Do you know whether -- I'm sorry, let's jump back for a
11 second. I've been handed another question to ask you.

12 Are all of the committees and CrossHarbor willing to
13 stipulate to Credit Suisse's right to credit bid, to your
14 understanding?

15 A. I don't know. I would doubt that the, I would doubt --
16 I don't know if, I don't know if the unsecured creditors
17 committee will or will not. I mean I'm just judging from
18 their pleadings and my conversations with them, is they're
19 not willing to concede that you have a secured claim or in
20 what amount. So I know they have that position. I don't
21 know what they're willing to do. And I don't control them,
22 either.

23 Q. Okay. So you don't know?

24 A. Correct.

25 Q. Okay. So let's look at Mr. Yankauer's e-mail, Item 4.

1 A. Hm-hmm.

2 Q. This was the: "As you highlighted, your procedures
3 prohibit the debt component of purchase price greater than
4 \$70 million. A purchaser paying a big price with low
5 leverage would be precluded."

6 The way you have proposed to change the bidding
7 procedures is to increase the absolute cap on the face
8 value of the note from 70 million to 105 million; is that
9 right?

10 A. Correct.

11 Q. Okay. You don't have any professional opinion on the
12 value of the reorganized debtors, right?

13 A. Sitting here today, I do not.

14 Q. Right. And so I mean as I understood the position
15 that, you know, Mr. Patten and you have been advocating,
16 it's that you're going to let the market decide, right?

17 A. I certainly think that's the best indication, yes.

18 Q. Okay. And so as far as you're concerned or as far as
19 you know, it's possible that the market might decide that
20 the value of the reorganized debtors is, you know,
21 \$200 million - \$300 million, but let's just pick
22 \$200 million, right?

23 A. Okay.

24 Q. Okay. As far as you know, in your professional
25 opinion, the market could decide that it's worth

1 \$200 million, right?

2 A. Yes.

3 Q. Okay. And the -- at the same 70 percent loan to value
4 ratio that you've prescribed in the new bidding procedures,
5 right, a \$200 million purchase price would amount to a
6 \$140 million note, face value, right?

7 A. That's the mathematics.

8 Q. Right, okay. And that would be prohibited under even
9 the revised bidding procedures, right?

10 A. Correct.

11 Q. Okay.

12 A. Because the definition of "fair market value" is a cash
13 purchase. If somebody's insisting upon even 100 -- if
14 somebody's insisting upon a \$10 note to bid \$200 million,
15 that means 200 million exceeds market value. If they
16 insist upon a \$140 million note, then 200 million probably
17 substantially exceeds market value. Fair market value is
18 what they would pay with no note. The only reason we're
19 offering any note is to try to assist us to make the pie
20 bigger. And what we're trying to do is assist making the
21 pie bigger within a prudent limit.

22 Q. Okay. Somebody who wanted to make a proposal that was
23 \$60 million in cash and a \$140 million face-value note,
24 right, that wouldn't count as a qualified alternative bid,
25 right?

1 A. Correct.

2 Q. Okay, thank you. Number 5 is: "The Procedures do not
3 specify the terms of the note that must be matched, and do
4 not appear to offer bidders the opportunity to offer better
5 note terms that might enhance recoveries."

6 Do you see that?

7 A. Yes.

8 Q. Okay. That note -- I was a little confused about
9 Mr. Lehr's testimony. Is there a note that's ever been
10 filed before midnight last night?

11 A. Not that I'm aware of.

12 Q. Okay. Item 7 is the requirement that (quoted as
13 recorded): "Bidders agree to terms no less favorable to
14 the debtors than the CH definitive agreement, and we don't
15 know what that says yet."

16 A. Yes.

17 Q. Do you see that one?

18 A. Yes.

19 Q. Okay. And we still don't know what the CH definitive
20 agreement says for sure yet because it hasn't been signed
21 up, right?

22 A. No, I think you know what the definitive agreement
23 says. It was filed. Right now, there's no intentions to
24 make any changes in it. I mean not only was it filed, but
25 it was filed as part of a proposed disclosure statement. I

1 mean the full intent is not to change it.

2 Q. Okay. But nobody's bound themselves to it yet, and so
3 it could be changed, right?

4 A. It certainly could be.

5 Q. Okay. And the procedures require -- I was a little bit
6 confused by your testimony on direct. I don't mean to put
7 words in your mouth, but I sensed that maybe you were
8 confused in your recollection of how the negotiations have
9 proceeded. But even the revised bidding procedures still
10 require that any other bidders' definitive agreement or -
11 (inaudible) - of definitive agreement be no worse for the
12 debtors than the CH definitive agreements, right --
13 definitive agreement?

14 A. Correct.

15 Q. Okay. I think you said something about substantially
16 similar. That's not in the revised bidding procedures,
17 right?

18 A. No, I --

19 Q. Let's take a look. Because somebody behind me said
20 "yes, it is", so I want to make sure we get it right.

21 Could you take a look at page 2, Paragraph 4(c)?
22 Paragraph 4(c) -- I'm sorry, are you with me on the
23 black-line?

24 A. Yes, I am.

25 Q. "Consist of an agreement in the form of the Agreement

1 to be entered into with Purchaser to effectuate the
2 purchase contemplated by the Plan (the 'CH Definitive
3 Agreement'), marked to show changes thereto that is on
4 terms and conditions no less favorable to the Debtors than
5 the terms and conditions contained in the CH Definitive
6 Agreement."

7 Right? That's what it says?

8 A. Yeah, that's -- you read it right.

9 Q. Okay, thanks.

10 A. I'm sorry, what was the question?

11 Q. Well, the question is: So there's no -- it's not
12 required merely that the terms proposed by another bidder
13 be substantially similar; it's required that they be no
14 worse off for the debtors than the provisions that are in
15 the CH definitive agreement, right?

16 A. Right -- well, actually, the way this is written, it's
17 much broader than what I said. And that is: There's no
18 limitation that it has to even be substantially similar.

19 We provide that you can submit your own form agreement
20 as long as you mark it to show the changes as long as the
21 debtor is not harmed by those, as long as it's not less
22 favorable. I don't understand why we would be entertaining
23 a bid for a contract that's inferior. So as long as it's
24 not inferior, we've basically given people full right to
25 mark up the contract.

1 Q. Who is the maker of the note that is proposed?

2 A. The maker is the reorganized debtor.

3 Q. Okay. Not the current debtor and not CrossHarbor, but
4 the reorganized debtor?

5 A. Correct.

6 Q. The new company to come out of the reorganization?

7 A. It's actually three of them, yes.

8 Q. Okay. I think you testified on your direct about the
9 prospect of bad things happening if these procedures are
10 not approved. And I guess I'm wondering: How long do you
11 think it would take to liquidate the debtors' assets?

12 A. Probably do an auction in seven days.

13 I mean when you say "how long would it take?" again, I
14 work with plenty of auction firms. We could publish in the
15 Wall Street Journal, we could get the judge to issue an
16 order, and we could go to auction in a week.

17 Q. Okay. In your experience, is 45 days a period of time
18 to market high-end real estate that is more consistent with
19 a liquidation sale than a full, robust marketing process?

20 A. I think it depends upon the preparation and the
21 visibility. I mean as I said before, would I like to have
22 more than -- I mean if you talk to CB, I mean they keep
23 talking about a 90-day period because they're 45 days is
24 from the day the mailer went out to the day bids were due.
25 And now we're talking about extending that by three weeks.

1 So you're talking about more than a full two months while
2 that's done. And you have all the premarketing process
3 which often goes into that time from when you say, "I'm
4 going to start doing a liquidation." You've got to do
5 everything we've done over the last two months to get ready
6 for that. So you really have -- you've got a vigorous
7 almost 120-day period, as they measure it. But 60 days out
8 on the street with something that you've been working to
9 put together for 2 to 4 weeks before that, I don't consider
10 that a liquidation sale in any way, shape, or form,
11 especially given the coverage, the quality of the
12 professionals that have been retained, the interest. This
13 is not going to look like, if there's anything I can do
14 about it, look like a liquidation.

15 Q. Okay. So your testimony is that, based on your
16 experience, 45 days from initiating the sending out the
17 teaser, right, to bids are due, that's not a liquidation;
18 is that right?

19 A. I mean, again, you're talking abstracts and
20 hypothetical.

21 Q. Yeah.

22 A. In this context, I don't believe -- I mean, again, what
23 do you mean by "liquidation"? Any sale -- if you go look
24 at Webster's, Webster's says a liquidation is a sale. If
25 what you're talking about -- usually the connotation of

1 "liquidation" is that you're sacrificing price.

2 And to give you an example, we put a liquidation
3 analysis in the disclosure statement. And I believe that
4 under what I describe as a liquidation, we're going to get
5 a fraction of the stalking-horse price. And that's what I
6 put in the disclosure statement. I believe if you went to
7 what I describe in this circumstance as a "liquidation",
8 you're going to get less than the stalking horse. I think
9 we know we're going to get at least the stalking horse,
10 hopefully considerably more. And I don't think the sale
11 process and the marketing process we're going through would
12 be described in what I'll describe as the pejorative
13 "liquidation", meaning getting less than fair value.

14 Q. All right. Last question: How did you go about coming
15 up with a liquidation in value if you didn't have a
16 professional opinion about -- (inaudible)?

17 A. I came about it because I believe if we have to go --
18 based on everybody who's been on the property and
19 everything I've seen, that if we have to go to an immediate
20 sale, you are likely only to get either CrossHarbor -- who
21 I don't think is going to stand by their present offer if
22 there's no competition at all. If somebody just tears up
23 the rule book and says, "Okay, you've got seven days, you
24 or somebody else," I think they're going to offer less, and
25 I think anybody who's going to come out of the woodwork to

1 buy under those type of circumstances is going to offer
2 less than what they put on the table to date.

3 MR. SAUNDERS: Okay. Thank you very much.

4 THE COURT: Mr. Warner.

5 MR. WARNER: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. WARNER:

8 Q. I want to focus first on the definitive agreement which
9 was filed last night, so I really haven't seen it.

10 So I'm going to deal with the one that I know of which
11 was filed a day, or so, ago. The purchase price is
12 100 million of which 30 is cash and 70 is a note, correct?

13 A. Just so I can -- being able to recollect who said what
14 on which conversation, I can't sit here -- recollect the
15 difference between -- I can't actually tell you the
16 difference between what was filed two days ago and what was
17 filed last night. So I only know last night as far as my
18 recollection right now. If you want to show me the, if you
19 want to show me the document, I can tell you whether you're
20 right or wrong.

21 Q. Let's forget it, then. What you've filed last night,
22 I'm going to represent I haven't seen it, so you tell me :
23 Is it \$30 million cash and a \$70 million note?

24 A. In the definitive agreement, that is correct.

25 Q. Okay. And the note, at least in the original form of

1 the definitive agreement, said it would be a new loan
2 document that would be supplied. The first time that was
3 filed with the Court was last night?

4 A. I don't handle the filings. I believe so.

5 Q. Okay. But it has not -- the form of the note has not
6 been public until last night?

7 A. I believe that's correct.

8 Q. Okay.

9 A. But when I say that, I don't know who's seen drafts and
10 not. I mean I don't know, frankly, who's commented on it
11 or not, so I don't -- when you say it hasn't been public,
12 to the best of my knowledge, it hasn't been filed. It very
13 well may have been circulated. I don't know.

14 Q. Okay, that's fair. I want to make a few assumptions
15 with you.

16 Assume no other buyers than CrossHarbor and Credit
17 Suisse at the auction.

18 Assume, also, that the Court says Credit Suisse has a
19 right to credit bid. You used the word "offset"; I'm going
20 to use "credit bid" because I think that's the legal term.

21 And assume, third point, that the Court says that
22 Credit Suisse has a \$310 million claim that it can credit
23 bid. Credit Suisse shows up to the auction, the only other
24 player there.

25 The minimum overbid is 3.5 million, correct?

1 A. Correct.

2 Q. So Credit Suisse bids 103 million -- 103.5 million,
3 minimum, right?

4 A. Correct.

5 Q. How much cash under this proposal, under the bid
6 procedures, Paragraph 6(m), does Credit Suisse actually
7 have to have in cash?

8 A. If I was to write the judge's order that's going to
9 come out -- because this is the same issue on a 363 sale.
10 The judge is going to have to write an order coming out of
11 that hearing. And Credit Suisse, as we know, is going to
12 be bidding on collateral and noncollateral, and so -- and
13 they don't have any right to credit bid on the
14 noncollateral. So they have to pay cash or cash and an
15 approved note for the noncollateral they're buying at the
16 sale.

17 So one of the things that has to happen first is, I
18 believe -- one of two things. If the Court allows the
19 credit bid -- and it may be, it may be that in a mixed
20 collateral/noncollateral sale, even a 363, the Court might
21 decide they don't have a right to credit bid. I don't
22 know. I mean I've never seen that type of mixed sale
23 before, so -- let me just finish. So you're asking me for
24 some definitive answers to a situation that I don't know if
25 anybody in this courtroom's ever seen before.

1 So we have a sale of collateral and noncollateral. I
2 believe the judge is going to have to rule what the value
3 is of -- out of the whole, what share is collateral and
4 what share is noncollateral. So I do believe they're going
5 to have to bid in cash or note at least the noncollateral
6 value because they don't have credit bid rights on that.

7 Then, secondly, the way -- we've structured it this
8 way, is that it's essentially going to take just about
9 \$30 million in order to repay the DIP which is due at that
10 time, which is a lien on the collateral that they're going
11 to be credit bidding. And so -- and there's going to be
12 some additional administrative costs. So the way this is
13 structured is they get a right to credit bid, but for -- or
14 you get it offset, but for the cash component.

15 And so I actually believe that when you read this,
16 coupled with how I would -- how I view the Court ruling
17 would be, is that they essentially are going to have to bid
18 in cash the greater of the noncollateral they're bidding
19 for or the 30 million less all portion of that 30 million
20 of cash. And that's what this says. All portion of that
21 30 million of cash that would go to them under the plan,
22 they get the right to offset. So we're never asking them
23 to put up money that they would otherwise get back, which
24 is the concept of credit bid.

25 So let's say it's probably going to be 30 million or

1 more if -- at an opening bid.

2 Q. I fully understand your answer.

3 A. Or 33.5 or more.

4 Q. I understand your answer, but I have some concerns.

5 The auction takes place before confirmation.

6 A. Correct.

7 Q. Credit Suisse walks in and says, "I have an order that
8 allows me to credit bid up to \$300 million" --

9 A. Okay.

10 Q. -- "310 million." They don't know at the time of the
11 auction, the way this is structured, how much cash they
12 have to come up with. Because, as you said, they're
13 proposing to buy things they don't have a lien on under
14 this structure. And so what if they walked in and credit
15 bid \$300,000,001 for all the stuff they have no lien on?
16 Why isn't that a better deal, and how can you not tell me
17 at the time of the auction that that's not the appropriate
18 price? My problem.

19 A. Well, your problem -- well, and I lost part of the
20 middle of your question, but I think I can answer as
21 follows, is: What we do in our real world where we're not
22 fighting in court is we put together the financial models;
23 and we work with Loughlin Meghji or whoever you presently
24 have, whoever Credit Suisse presently has employed; and
25 we'll work with the committee, the three committees to put

1 together a distribution model.

2 I mean we have a distribution model now for the plan.
3 And I actually have -- Steve Yankauer -- a diagram kind of
4 showing the waterfalls and different dollar amounts in and
5 out. So I mean we've put together a computer model that
6 shows, based on what allocation the Court gives to
7 collateral and noncollateral, how that would flow through
8 and what the credit that would ultimately flow to Credit
9 Suisse would be so that you could actually determine what
10 the net amount is they would have to bid in cash.

11 Q. Great. When are you asking the Court to create that
12 allocation?

13 A. That allocation would have to be at the time when it's
14 litigated whether Credit Suisse has a credit bid, and then
15 how much. And we can handle the exact same thing. If the
16 Court rules that they have a secured interest and it is up
17 to the market value of the property, and the market value
18 of the -- I'm sorry, of the collateral, and the market
19 value of the collateral is going to be determined by the
20 sale process, and that after hearing the evidence the Court
21 believes that the collateral is 60 percent of the entirety,
22 then at that moment forward, as soon as we hear that from
23 the Court, we can tell exactly how much CS would have to
24 bid in cash at every level.

25 Q. Is that before or after this auction?

1 A. Before the -- it would be immediately -- assuming --
2 and that's one of the reasons for pushing out the entire
3 process by 21 days besides giving more time to market: It
4 allows the litigation schedule that was discussed between
5 the Court and the parties this morning, it allows that
6 litigation schedule to run its course and for us to have an
7 answer from the Court prior to going into the auction.

8 Q. So prior to the auction, you're going to ask the Court
9 to determine an allocation of the collateral and
10 noncollateral as to the purchase price?

11 A. If Credit Suisse is to credit bid, I think you
12 absolutely need that. There's no other way to run the
13 auction and figure out how much they can bid without that.
14 If they can't credit bid, it's immaterial, it can be
15 handled at a confirmation hearing; but if they're going to
16 credit bid, as you say, they have to know how much they
17 have to bid in cash.

18 Q. I've read most of the pleadings. I know they're being
19 filed fast and furious. But where is the debtors' motion
20 before the Court seeking to allocate between collateral --
21 alleged collateral, for the moment, because maybe the lien
22 - (inaudible) - question, alleged collateral and clearly
23 not collateral? Where is that motion? When is that being
24 teed up if it has to be teed up before we have these --
25 before we have this auction?

1 A. Right. The debtor has to answer the complaint, and I
2 believe that's part of the answer in the complaint. The
3 debtor has been sued. An adversary's been launched, and
4 the debtor and the committee are both defendants. As part
5 of that answer, I believe, is a request or will be a
6 request that the Court is going to make that allocation.

7 Q. I hate to differ with you, but my reading of the
8 complaint says it has nothing to do with valuation of the
9 noncollateral. And that's the problem we're facing here.
10 You're asking that if they have a right to credit bid --
11 you're not telling them how much cash they have to come up
12 with. And at this moment, the complaint that's before the
13 Court is not to determine that.

14 A. Okay. Well, the alternative, the only alternative to
15 that -- there's only two alternatives to the Court
16 resolving it beforehand, and that is: Either, "A", Credit
17 Suisse cannot credit bid, okay; or that we go to sale of
18 the collateral and the noncollateral separately.

19 And I do suggest to you that that is going to lead to
20 one of two things: Either the person who bids on the
21 Warren Miller Lodge is going to be the only person who's
22 going to show up to bid, and they'll bid \$1 for the Credit
23 Suisse collateral, okay; or you could run the auction in
24 the opposite - (inaudible) - and, therefore, have a bid on
25 the collateral. And there you're going to have massive

1 chilling because anybody who bids on the collateral has no
2 idea what they're ultimately going to have to pay for the
3 lodge; and, consequently, you're going to discourage
4 bidding.

5 So all I'm saying is the issues you're bringing up are
6 precisely what we have wrestled with for two months. I
7 mean if you think -- if you don't think we've spent two and
8 three weeks wrestling over how to fashion "M" and walking
9 through the permutations on what to do -- I believe we
10 fashioned, frankly, the only thing that works. And you're
11 absolutely right, it depends upon, prior to the auction,
12 the Court determining if Credit Suisse can credit bid; and
13 if so, what's the allocation between the collateral and the
14 noncollateral?

15 As I say, I mean there's -- the easy alternatives is
16 they either can't credit bid or we go to two separate
17 auctions. If we go to two separate auctions, I suggest to
18 you you're going to have mush.

19 Q. And I appreciate that. I think my point is: In "M",
20 it does not reference the procedure to create the
21 allocation, and the pending litigation does not focus on
22 that.

23 A. Okay.

24 Q. So encourage your to think about that because we're now
25 faced with trying to get some procedures out. And I guess

1 the concern I have is - and I hope you have this concern -
2 unless we know that allocation, other bidders will either
3 be stifled, surprised, unwilling to come to the table, but
4 could be affected by not knowing that allocation.

5 THE COURT: Mr. Warner?

6 MR. WARNER: Hm-hmm.

7 THE COURT: Why don't I just order under "M" that
8 you can offset and credit bid up to your -- up to the debt,
9 up to the claim, but they better come up with 33 million in
10 cash?

11 MR. WARNER: The amount of the DIP, the amount --

12 THE COURT: Or 33.5 I guess is what it would be.

13 MR. WARNER: You're talking because the break-up
14 fee?

15 THE COURT: The cash component. Use the cash
16 component and just add the 33.5.

17 MR. WARNER: But, logically, if it's two pieces
18 -- if it's the DIP amount, then it has to be taken out
19 because it's a senior lien; and the break-up fee expense
20 reimbursement. Logically, I think that that makes a lot of
21 sense.

22 THE WITNESS: But, Your Honor, it doesn't work.

23 MR. WARNER: I'd like to talk to Credit Suisse.

24 THE WITNESS: It doesn't work. Let's assume the
25 noncollateral is worth 60 million. Then you're letting

1 them credit bid where they don't put up any cash, put up a
2 note, or anything. They're walking away -- if they only
3 have to put up 33.5 in cash, they're walking away with --

4 THE COURT: Well, they have to put in the working
5 capital, too.

6 THE WITNESS: But the working capital doesn't --

7 THE COURT: Is different, is different.

8 THE WITNESS: Well, and doesn't go to the
9 creditors. So you have the unsecured creditors; and,
10 frankly, equity who have an asset there that they're
11 entitled to get the full value for. Credit Suisse, when
12 they credit bid, puts nothing up.

13 THE COURT: Well, what if the order directs that
14 they come up with the cash component so you can do the
15 bidding and that, upon the allocation, they'll need to come
16 up with an amount for the noncollateral?

17 THE WITNESS: That would probably work. I mean,
18 you know, again, on first impression. We would have to
19 sift through and actually work the mechanics, but that
20 might work.

21 THE COURT: I don't know if you heard that. You
22 were --

23 MR. WARNER: I'm sorry, we were trying to
24 understand the effect.

25 THE COURT: You were conversing. Basically, what

1 if I just put in that provision, since it's my order, that
2 you've got an offset or credit bid, whatever is the proper
3 term, up to the amount of your claim; and you put in
4 33.5 million as your cash because you have to do the
5 30 million plus the 3.5 million; and upon the allocation as
6 to what the noncollateral is, you come up with that
7 additional cash?

8 MR. WARNER: First of all, I'm not sure that the
9 DIP is 30. I thought it was closer to 20.

10 THE COURT: All I'm saying is: As it stands
11 right now, the proposal is that you come up with the amount
12 of cash component of the purchase price set forth in the
13 plan. As I understand it, that's \$30 million. Correct?

14 MR. WARNER: Yes, but that would be to buy all
15 assets, right?

16 THE COURT: That's to buy the equity interest.

17 MR. WARNER: Yes.

18 THE COURT: Right?

19 MR. WARNER: That may not be semantics, but --

20 THE COURT: So you would come up with 30 million
21 plus the 3.5 million for the additional amount.

22 MR. WARNER: And what do you get for that?

23 THE COURT: You get the equity interests and --
24 if you get the equity interests, I'm not so certain that --

25 MR. WARNER: See, I think I that's the problem.

1 THE COURT: Because then you don't need the
2 allocation if they're the equity interests.

3 MR. CHEHI: Your Honor, we just don't want to get
4 too far of it because I think it's a little bit more
5 complicated than that. The value of the Warren Miller
6 Lodge is much less than one might think it is.

7 And the issue of the assets that are not our
8 collateral, we may very well be very happy just to take our
9 collateral and go home. That may not be what everybody
10 else has in mind here, but that actually works very well.
11 We don't need the Warren Miller Lodge. The Warren Miller
12 Lodge is not a big asset. People can talk about how
13 important it is; it's not all that important. It is not
14 a -- does not have a lot of inherent value. It's an
15 unfinished asset that is -- runs at a deficit, and it
16 doesn't have anything much in the way of units to be sold
17 in it, which is the only real revenue source from it.
18 They're selling two condominiums that have to be sold.

19 But all of that is sort of evidentiary. And we
20 can talk about that, but going for the equity is not
21 necessarily what the lenders would want to accomplish to
22 buy the equity. There are other ways to accomplish a
23 comprehensive solution in connection with the sale.

24 THE COURT: Well, Mr. Warner brought up the
25 question.

1 MR. CHEHI: Yeah, I know he did.

2 THE COURT: And I told him what I thought might
3 be a solution in that.

4 MR. WARNER: I think the question, Your Honor,
5 that I was raising, or the back-and-forth with the witness,
6 really focused on: This allocation is relevant because if
7 we have the -- if Credit Suisse has the right to credit
8 bid, it needs to know how much cash it needs to come up
9 with if it's forced to stay within the structure of the bid
10 procedures. That sort of highlights the reason why these
11 bid procedures are so restrictive. If we were able to
12 credit bid 300 million and have no interest in acquiring
13 the noncollateralized assets, why should we have to come up
14 with that additional cash? And we're forced to.

15 I have one final question because it's sort of
16 the same issue for this witness.

17 Q. (By Mr. Warner) And I gave the witness -- I gave you
18 this example of: I'm the only other bidder, and I bid
19 310 million or I bid 103.5 million. It doesn't really
20 matter; I overbid. And the question was cash. Assume
21 nobody else shows up. You have CrossHarbor with
22 \$30 million cash and a \$70 million note.

23 What's the allocation at this moment in time among the
24 collateralized and noncollateralized assets?

25 A. Similarly, the Court is going to have to ultimately

1 make that determination. And I mean the debtor can propose
2 something or not, but it's ultimately going to have to be
3 an issue the Court determines because it's the allocation
4 of value between those two parties, between the unsecured
5 creditors and the secured creditor.

6 Q. What's the debtors' position on that allocation at this
7 time?

8 A. We are intending to engage a valuation firm to try to
9 make that determination. But I don't -- what I can tell
10 you is we have -- and you're into a very interesting area
11 of valuation theory. Whenever you have two parts, neither
12 one of which - in all due respect to Mr. Chehi - neither
13 one of which functions very well independently and who have
14 a combined value substantially greater, there's always a
15 tug-of-war between how you allocate that value.

16 And I mean the greatest -- the comparable example is in
17 patent litigation where somebody infringes on a patent,
18 they have 100 patents that go into a device and they
19 infringe on 1. That device fails if you pull that 1 patent
20 out, but that 1 patent alone -- the device doesn't work if
21 any of the other 99 aren't there. So there has to be an
22 allocation of the value of the entirety.

23 What we did in the disclosure statement is: For lack
24 of anything better right now, one of the concepts that's
25 utilized is an allocation of cost. The theory being that

1 if you've got a unified activity, you're making a capital
2 investment into producing the results of that activity on a
3 unified basis using a cost allocation method.

4 And there's only two units left for sale, the
5 condominiums. Those have been -- again, everything we've
6 talked about here is simplified for what you really have.
7 So you have American Bank's liens on the Warren Miller
8 Lodge and on those two units. And you have people who have
9 contracted to buy those two units, and they're purchase is
10 less than the release price off the American Bank lien. So
11 what we're talking about being unencumbered assets really
12 aren't unencumbered; they're just not encumbered by Credit
13 Suisse, they're encumbered by somebody else. And then the
14 residual value behind those encumbrances is essentially for
15 the benefit of the unsecureds. So if you take away those
16 two unsold units and assuming they go away for the lien
17 value or for their lease amount, there's approximately --
18 it's almost a 50/50 split between cost of the lodge and
19 cost of the balance of the development.

20 And so for purposes of the liquidation analysis, since
21 we have to show something, we made the calculation based
22 on, on cost basis, which is of -- quite frankly, is a very
23 accepted methodology when you have a unified whole and you
24 have to allocate value from that whole to the parts.

25 But as I say, ultimately, we will have a valuation

1 expert which will give -- the valuation expert will opine;
2 and, ultimately, I think this Court will make a decision.

3 Q. You made the comment that --

4 A. I'm sorry, and that also skirts the issue of the
5 yet-to-be-issued member units. And I think, again, I think
6 that's going to ultimately be a legal decision as to
7 whether that's collateral or not.

8 Q. I appreciate that, but -- okay. You made the comment
9 that the combined value is substantially greater. But then
10 we just heard Mr. Chehi say that in his belief or his
11 client's belief, the lodge doesn't have a lot of value.
12 What are you basing your statement that the combined value
13 is substantially greater than the -- what you've almost
14 said is 50/50, the collateralized assets versus the
15 noncollateralized assets?

16 A. Well, every person I've spoken to in this case,
17 including Credit Suisse - and they can change their mind -
18 but every person I've spoken to in this case believes that
19 the combined -- the offering the -- the market value of the
20 combined assets will exceed the market value of those
21 assets offered independently. I haven't heard, other than
22 Mr. Chehi testify, that anybody said that you can get more
23 selling those assets separately than you can as a combined
24 whole.

25 Secondly, my experience -- I mean I've been around this

1 a long time. My experience leads me to believe that. And
2 one of the questions you had asked me is: Well, show me a
3 place where they've been sold separately. How can you
4 prove that?

5 And the answer is: Nobody's ever been stupid enough to
6 try to sell them separately.

7 When you say how -- every time -- I have never seen a
8 golf subdivision sold without the parking lot, the
9 clubhouse, the golf cart shop, all the major structures.
10 Nobody has ever, that I know of, tried to sell the golf
11 course without those amenities. And why not? If people
12 would offer more to buy the third hole and not the other
13 17, you would do it. You've never seen that done.

14 Q. Sure.

15 A. And that's why I believe it. And as I said, I mean if
16 somebody, somebody would pick up the phone and call me and
17 tell me they believe differently -- nobody has ever done
18 that. And I've asked every person in this case.

19 Q. I think the problem, though - and you would agree with
20 me, right - that if there were a \$300 million credit bid
21 just for the collateralized assets, someone is not likely
22 to pay more than that for all. Isn't that the problem?

23 A. Well, I don't know. Mr. Chehi says somebody's going to
24 pay \$310 million for the whole. So we're going to find
25 out.

1 MR. WARNER: I think that's all. Thank you.

2 THE COURT: I do have a question for you. Other
3 witnesses on this matter?

4 UNIDENTIFIED SPEAKER: No, Your Honor.

5 THE COURT: Okay. Do you have other witnesses?

6 MR. SAUNDERS: Yes, we do, Your Honor.

7 THE COURT: You do?

8 MR. SAUNDERS: Hm-hmm.

9 THE COURT: Okay. You have about 45 minutes to
10 wrap it all up.

11 So, Mr. Beckett, you had a question?

12 MR. BECKETT: I'll ask him later.

13 THE COURT: Any redirect?

14 MR. MOORE: Your Honor, Paul Moore, if I may.

15 THE COURT: Yes.

16 MR. MOORE: I'm still landlocked. Can I stay
17 here?

18 THE COURT: Yes.

19 MR. MOORE: Thank you.

20 CROSS-EXAMINATION

21 BY MR. MOORE:

22 Q. Just quickly, with time period, again - we've done this
23 before - the original time periods were set by Credit
24 Suisse in its DIP loan, correct?

25 A. Yes.

1 Q. And you testified last time that, as part of the bid
2 procedures or the sale procedures, that you had negotiated
3 an additional 30 days to April 30th from us; is that
4 correct?

5 A. I insisted on it, and you granted it.

6 Q. And notwithstanding the fact that that wasn't approved
7 today, you've negotiated, if it's approved this time,
8 another 21 days; is that correct?

9 A. That is correct.

10 Q. So we're about 60 days beyond the deadlines that Credit
11 Suisse originally set?

12 A. Fifty-one.

13 Q. Okay. With respect to liquidated damages, you have a
14 provision in here that the lenders don't have to put up any
15 deposit; is that correct?

16 A. Correct.

17 Q. Okay. Credit Suisse - Cayman Islands is the agent for
18 the lenders?

19 A. Correct.

20 Q. Do you know how much of the loan is held by Credit
21 Suisse - Cayman Islands?

22 A. What I hear is somewhere between very little or none.

23 Q. Okay. Do you know who the other lenders are?

24 A. I mean I've heard various names, including CrossHarbor.

25 Q. Okay. But do you know the other 39 or 38, if you

1 count --

2 A. I've probably heard half their names occasionally.

3 Q. Okay. And with respect to some of those, they're like
4 CLOs of Highland, or something, or --

5 A. Right. I mean there's no reason to believe a bunch of
6 them have any capacity to put money up or would put money
7 up.

8 Q. So you don't know anything about their
9 creditworthiness, correct?

10 A. Again, I don't know about the specific legal entities.
11 I know generally about some of the reputations of some of
12 them.

13 Q. But you don't know which subsidiary or affiliate,
14 whether it's one of those famous CLOs or the like?

15 A. I don't have any idea.

16 Q. Okay. So to the extent Credit Suisse says you should
17 amend this agreement if it's not already provided so that
18 CrossHarbor is standing behind any liquidated -
19 (inaudible) - then the same change, in fairness, ought to
20 be made with respect to the lenders, correct, particularly
21 given their history of defaulting on the DIP loan?

22 A. Well, that would, that would keep symmetry.

23 Q. Okay. The same thing with respect to the credit bid.
24 How would you administer that if there 's 40 different
25 lenders? Would they all come to the auction and wave their

1 hands if they're credit bidding or not agreeing to credit
2 bid?

3 A. My presumption is that Credit Suisse has -- as agent,
4 has to be speaking for all of them and has to have the
5 capacity to commit whatever the entity is that is credit
6 bidding. I don't know their internal dynamics. I've never
7 seen their documentation. I don't know what authority
8 Credit Suisse has or doesn't have. But they would have to
9 represent -- I think we put in here that they have to
10 represent -- they've got -- they and anybody else has
11 capacity to bid and bind.

12 Q. Would that include the credit bid? Would you require
13 proof that they have authority to credit bid for people?

14 A. I think you're right. I think we took that out
15 originally because I didn't want anything that restricted
16 Credit Suisse. But so I think right now it does say that
17 Credit Suisse can just bid out of a black box.

18 Q. When they made their interim DIP loan to you, did they
19 tell you it was contingent upon whether they all got
20 together and cobbled together the money at the final
21 hearing?

22 A. No.

23 Q. Okay. With respect to a sale of the whole or sale of
24 the parts, you said you've talked to everybody including
25 Credit Suisse. Who did you talk to?

1 A. I asked Mr. Yankauer real early on.

2 Q. He's in the front row over there?

3 A. Yes.

4 Q. What did he say about the sale of the whole versus the
5 sale of the parts?

6 A. He agreed with me that it made sense to go to market,
7 try to sell the entirety rather than trying to sell the
8 collateral in one lot and then noncollateral in another.

9 Q. Did you talk about the lodge and the ability to park if
10 you were going to this high-end private ski resort?

11 A. You know, I never got into the details. Except for
12 litigation purposes, it's not an issue that anybody really
13 gives two thoughts to. As I've said, you've never seen
14 somebody sell the 13th hole of a golf course, or -- it's
15 too integral to that development and to the ongoing --
16 again, somebody who's buying this is buying on the
17 assumption that people are going to continue to come in and
18 pay multimillion dollars per lot they're going to resell.
19 They're going to do that with a hole in the middle of the
20 development.

21 Q. Okay. And you were asked about your negotiations with
22 respect to CrossHarbor with respect to the plan and the
23 sales procedures. Have they been civil in all respects
24 throughout?

25 A. You're the only one I've had a shouting match with.

1 But, yeah, everybody else has been civil.

2 Q. Relatively speaking?

3 A. Yeah, yeah. I'll deal with Barry anytime instead of
4 you.

5 Q. And you were complaining just recently that I wasn't
6 arguing with you. So they've been relatively professional,
7 too, have they not?

8 A. They have been, yes.

9 Q. Has any effort been made to go around you to
10 Ms. Blixseth, to your knowledge?

11 A. Not that I'm -- I mean there was clearly an early
12 meeting with Ms. Blixseth that I testified to I did not
13 attend. But I don't consider that, quote, going around me.
14 And, subsequently, I'm not sure they've had -- I mean to
15 the best of my knowledge, they've had no direct substantive
16 discussions with her. But you would have to ask her. But
17 I'm not aware of any aware of any. And, certainly,
18 anything they've -- any discussions that they might have
19 had with her - that I'm not aware of any - haven't found
20 their way into the negotiations.

21 Q. Well, just quickly to supplement the record with
22 respect to that, you're talking about that California
23 meeting you testified to last time?

24 A. Yeah, because -- well, I know when it was. It was in
25 the first week of January, yes.

1 Q. And you were invited to that, correct?

2 A. I was.

3 Q. And I was invited to that, correct?

4 A. I don't know.

5 Q. At some point, were you told that I was on hold to come
6 but I wasn't going to come if you weren't going to be --

7 THE COURT: What does this have to do with
8 anything?

9 MR. MOORE: I was just going into the
10 negotiation, Your Honor. I'll move on if you want me to
11 move on.

12 THE COURT: Let's move on.

13 MR. MOORE: Thank you.

14 THE COURT: We're not having a chat here.

15 MR. MOORE: Okay.

16 Q. (By Mr. Moore) At any time, has CrossHarbor made any
17 threats against you or your firm in order to induce you to
18 do anything in this case?

19 A. No.

20 Q. Okay. Has anyone else?

21 A. I think so.

22 Q. Okay. And who would that be?

23 A. Skadden.

24 Q. Okay. And would you describe those threats, please?

25 A. Well, only if the judge wants me to.

1 THE COURT: You know, at this point, this isn't
2 discovery, either.

3 MR. MOORE: Your Honor, Credit Suisse has been
4 making all kinds of allegations about --

5 THE COURT: Well, how does this relate to the
6 bidding and solicitation?

7 MR. MOORE: It relates to their efforts to
8 frustrate the bidding and the plan. These discussions were
9 in connection with the plan and disclosure statement and
10 efforts to resolve those issues. And I think they're
11 relevant. I think their much more relevant than a lot of
12 the: What happened back in the early days of 2008 with
13 respect to Tim Blixseth?

14 THE COURT: I'll give you a little latitude.

15 MR. MOORE: I'll be very quick.

16 Q. (By Mr. Moore) What were those threats?

17 A. I believe that Skadden threatened all of the debtor
18 professionals that if the plan wasn't confirmed and there
19 was a diminution value as a result, that they would hold
20 the professionals liable.

21 Q. Personally liable?

22 A. Yes.

23 Q. And as a result of that, did you notify your firm?

24 A. Yes.

25 Q. Did you consider notifying your carrier?

1 A. No.

2 Q. Okay. Did you consider resigning?

3 A. Yes.

4 MR. MOORE: Okay, thank you. That's all, Your
5 Honor.

6 THE COURT: Thank you. You had a question?

7 MR. GEARIN: Your Honor, I just had two or three
8 real brief questions as representing Mr. Blixseth, who is a
9 prospective purchaser.

10 CROSS-EXAMINATION

11 BY MR. GEARIN:

12 Q. Mr. Greenspan, have you seen the pleadings in which my
13 client did express an interest in participating in the plan
14 process or acquiring rights in the -- of the debtor?

15 A. Yes.

16 Q. And you were aware that Mr. Blixseth actually is
17 interested in pursuing -- acquiring the club back; is that
18 right?

19 A. That is what I've heard.

20 Q. Okay. I'd just like to focus very briefly on the
21 black-line to the DIP procedures.

22 THE COURT: Just a moment.

23 MS. BLIXSETH: Your Honor, I can't, I can't hear
24 what the attorney is saying.

25 THE COURT: We'll have him move closer to the

1 mike.

2 MR. GEARIN: Okay, thank you.

3 THE COURT: Is that better.

4 MR. GEARIN: Can you hear me now?

5 MS. BLIXSETH: Yes, thank you.

6 MR. GEARIN: Okay.

7 Q. (By Mr. Gearin) I want to focus back on the black-line
8 to the bid procedures that you've submitted as an exhibit
9 here. And I really want to look at Paragraph 5(d), which I
10 think is an addition to the prior bid procedures. And down
11 at the bottom of that, the language says: "The only
12 contingency" --

13 A. I'm sorry, Mr. Gearin, if you would let me get up to
14 it.

15 Q. Sure.

16 A. Okay. Yes, sir. Where are you?

17 Q. Did you find that?

18 A. Hm-hmm.

19 Q. So this is an add, right, to the prior procedures, is
20 it not?

21 A. Everything underlined is an add.

22 Q. Right. And the add is: "The only contingency being
23 approval by April 30, 2009" --

24 A. I'm sorry, I thought you said 5(d).

25 Q. That's what I'm reading from is 5(d).

1 THE COURT: 5(d), page 4. He's about the third
2 line down.

3 THE WITNESS: Oh, you know, what's happened is
4 you were actually -- if you're looking at the actual ones,
5 there's a numbering error with what I'm looking at. So
6 5(d) on what you're looking at is probably really 4(d) on
7 mine.

8 Q. (By Mr. Gearin) I'm looking at the one that was filed
9 with the Court.

10 THE COURT: It is 4(d) under yours.

11 THE WITNESS: Yes. That was the confusion, Your
12 Honor. Thank you.

13 Okay, so 4(d).

14 Q. (By Mr. Gearin) Okay: "The only contingency being
15 approval by April 30, 2009 of a Plan of Reorganization
16 substantially similar of that filed by the Debtor or as
17 such plan might be modified with the reasonable consent of
18 such bidder."

19 Do you see that language?

20 A. Yes.

21 Q. Okay. Now, I actually note down in "G" down below,
22 there's a very similar provision that was already in the
23 prior bid procedures, right? And that provision says:

24 "Not be subject to any conditions precedent other
25 than approval of such Alternative Bid by the Bankruptcy

1 Court in connection with the confirmation of a plan
2 incorporating such alternative Agreement."

3 Do you see that?

4 A. Yes.

5 Q. What was the intent of the modification in "D"? Which
6 plan is that referring to in Paragraph D?

7 The plan substantially similar to that filed by the
8 debtor, which plan is that?

9 A. That would be the plan of reorganization that is
10 attached to the, the final disclosure statement. So I --
11 reading that as the -- basically, the plan that was filed.
12 I think it was just filed last night --

13 Q. So that would be a plan --

14 A. -- or early this morning.

15 Q. I'm sorry to interrupt you. That would be a plan that
16 was filed last night at midnight; is that right?

17 A. Correct.

18 Q. Okay. If my client comes in and wants to bid on this
19 property, is my client bound by that plan? Can my client
20 make proposals to modify that plan?

21 For example, can my client propose to reject the
22 membership agreements of CrossHarbor?

23 A. I believe it can. The debtor, in conjunction with the
24 committees, as required by this, would have to evaluate
25 that. One of the things that goes -- and, for example, one

1 of the things that goes with a rejection would be a very
2 substantial rejection claim. So we're trying not to rule
3 anything out, but it would be evaluated as for its
4 reasonableness, cost upon the estate, and whether it's in
5 the best interests of all the stakeholders to this
6 proceeding.

7 Q. I think I heard earlier testimony that says that you
8 had a DIP order that has a provision in it that says that
9 any plan you're going to propose has to be agreeable, has
10 to be done with the consent of the DIP lender. Is that
11 true?

12 A. We've had a fight over that one, too. The requirement
13 of the DIP is that the plan had to be filed by a date,
14 which is the 13th, and that plan be approved, be subject to
15 their approval. We've had something of a debate of whether
16 I can amend that plan now and whether that's a default
17 under the DIP. The DIP does not say I can't amend it. So
18 I'm not going to get -- I don't give legal -- I'm not going
19 to give you a legal opinion as to whether I can go and
20 amend that and whether that would trigger the DIP or not.
21 There may be a difference of opinion between the DIP lender
22 and me on that.

23 Q. Well, let me see if I can reframe it. I mean what I
24 want to know is: My client coming in as a prospective
25 purchaser, is my client bound to a plan that is subject to

1 the consent of both the debtor and CrossHarbor? And is
2 that plan now binding upon my client as a prospective
3 purchaser?

4 A. The answer is: There is nothing you -- from my
5 perspective - and I don't think there is anything written
6 down to the contrary; and if there is, we ought to work to
7 change it - when we're talking about the auction,
8 CrossHarbor is a bidder, okay, just like everybody else.
9 And they don't have rights of veto or anything else.

10 So your client is, is free, like anybody else, to
11 propose anything. And they don't have any rights of veto.
12 And you have rights under this to make proposed
13 modifications to the plan, and those will be considered for
14 all the ramifications on -- by all the parties that are now
15 involved in making that decision.

16 Q. And so your position is: If my client were to make an
17 offer and propose modifications to the plan, they still
18 could be construed as a qualified bidder under these
19 bidding procedures; is that right?

20 A. I believe so.

21 Q. Okay. Let me turn to one other topic, and I'll be very
22 brief about this.

23 I guess I want to explore -- I've heard you testify
24 just a bit earlier -- what is the stalking-horse bid? As I
25 understand it, the stalking horse bid is \$30 million in

1 cash and a \$70 million note. And the \$70 million note, I
2 heard you earlier testify, is not a note from CrossHarbor
3 or from its newly formed entity; it's a note from the
4 reorganized debtor. Is that right?

5 A. That is correct. It's the equivalent of -- described
6 as what we call in the real-estate business carryback
7 paper. It's a note from the reorganized debtor that will
8 be in favor of the secured creditor and the liquidating
9 trusts. There's a lot of other conditions or there's other
10 financial and other requirements on the bidder, including
11 things like the working capital, but that -- as far as
12 saying who the note's from, that is correct, the note's
13 from the reorganized debtor. It will go to the
14 custodian -- well, it will go to -- beneficial interests
15 will be assigned to the secured creditor and the
16 liquidating trusts.

17 Q. Well, what I want to focus on is actually what tangible
18 benefit, what benefit CrossHarbor is bringing to the table
19 as a stalking-horse bidder. And I understand that to be
20 30 million in cash. That's really all they're bringing;
21 isn't that right?

22 A. No. They're bringing the 30 million in cash plus the
23 25 million of cash working capital that has been to be
24 injected, plus the evidence of 50 million of additional
25 capital commitments to them so that would be available to

1 prosecute the project. And so, essentially, they're going
2 at risk for the \$55 million with essentially an undertaking
3 as part of the plan to go ahead and prosecute the project.
4 Essentially encumbering that, there's a whole bunch of
5 other things within the plan. I mean things like all the
6 contracts that are being assumed, that debtor is going to
7 have to show adequate -- capacity of adequate performance;
8 and, in fact, is going to have to perform all of the
9 assumed contracts, which includes the member contracts.
10 And failure to do that would subject the debtor at which
11 they've invested 55 million to failure.

12 Q. The 30 million in cash, Mr. Greenspan, I think I heard
13 you earlier say that it would be -- the DIP loan, the
14 balance of the DIP loan by time you get to the effective
15 date would be about \$30 million. Is that your prior
16 testimony?

17 A. I'm sorry. If I said that, I misspoke. I think what I
18 said was the DIP loan at the effective date, assuming we
19 spend all of it, the DIP loan would be about 20 -- I want
20 to say 23.3 million, or so. In addition, there are some --
21 there's some convenience, the convenience class payments,
22 the priority payments, the prepetition taxes, the property
23 taxes.

24 And given what's gone on, I'm assuming our
25 administrative costs are substantially greater than the --

1 don't get me -- the DIP budget was proposed at the time we
2 had a consensual DIP, so not a whit of this litigation,
3 historic or go-forward, is included in the DIP budget. So
4 we have very substantial admins in excess. And so all of
5 that still leaves a little bit left out of the 30 million,
6 but basically the 30 million is what it takes to retire all
7 the admins as well as the DIP.

8 Q. Okay. But of the 30 million that CrossHarbor is going
9 to propose to pay, 23 million or 24 million of that is
10 going to go back to them to pay their DIP loan; is that
11 right?

12 A. Well, again, now, separate entities, presumably. But,
13 that's correct, it will go back to a CrossHarbor affiliate.

14 Q. Okay, thank you.

15 MR. GEARIN: I have nothing more, Your Honor.

16 THE COURT: Any redirect?

17 MR. REAM: I only have a couple questions, Your
18 Honor.

19 REDIRECT EXAMINATION

20 BY MR. REAM:

21 Q. Mr. Greenspan, would the debtors agree to add a
22 provision to the bid procedures that they only become
23 effective upon an execution of the definitive agreement by
24 both the debtors and CrossHarbor?

25 A. I'm sorry, I lost the question.

1 Q. I'll try it again.

2 A. Thank you.

3 Q. Would the debtors agree to adding a provision to the
4 bidding procedures that they don't become effective unless
5 the debtors and CrossHarbor sign the definitive agreement?

6 A. Yes.

7 Q. And would the debtors agree to a provision that says
8 the DIP financing entity, whichever entity that currently
9 is, agrees that the \$5 million required under the
10 procedures is essentially at risk under the definitive
11 agreement?

12 A. The debtor would certainly agree, and I think
13 CrossHarbor should agree to that.

14 MR. REAM: Your Honor, I failed to offer
15 Exhibit A into evidence. I did not seek to admit "C", but
16 I am offering "A".

17 THE COURT: Any objection? Exhibit A is
18 admitted.

19 EXHIBIT A ADMITTED INTO EVIDENCE

20 MR. REAM: No further questions, Your Honor.

21 THE COURT: Thank you. Mr. Greenspan, you may
22 step down. Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: Oh, yes, he's calling a witness, I
25 think.

1 MR. SAUNDERS: I'm getting ahead of myself. We'd
2 call Ms. Blixseth.

3 THE COURT: Okay.

4 EDRA BLIXSETH, WITNESS, SWORN

5 DIRECT EXAMINATION

6 BY MR. SAUNDERS:

7 Q. Good afternoon, ma'am. Do you still owe CrossHarbor
8 the \$35 million that we've talked about previously?

9 A. Yes, I do.

10 Q. Okay. In January of this year, you asked Mr. Byrne by
11 e-mail if he would lend you more money personally, right?

12 A. Correct.

13 Q. So in the middle -- January 30th, in the middle of the
14 debtors negotiating their plan of reorganization and these
15 bidding procedures with CrossHarbor, you personally asked
16 Mr. Byrne if he would lend you more money, right?

17 A. Yes, that's what I just said; yes.

18 Q. Okay.

19 MR. SAUNDERS: No further questions, Your Honor.

20 THE COURT: Does anyone have questions for
21 Ms. Blixseth?

22 MR. PATTEN: No, Your Honor.

23 THE COURT: That will conclude your testimony,
24 thank you.

25 THE WITNESS: Thank you.

1 THE COURT: Next witness?

2 MR. SAUNDERS: I would call Sam Byrne, Your
3 Honor.

4 THE COURT: Okay. Mr. Byrne, if you could come
5 forward, please.

6 SAMUEL T. BYRNE, WITNESS, SWORN

7 DIRECT EXAMINATION

8 BY MR. SAUNDERS:

9 Q. Good afternoon, Mr. Byrne. How are you?

10 A. Good, thank you.

11 Q. You first talked to Discovery Land Company about
12 getting involved with the Yellowstone Club back in February
13 of 2008 when you were planing to buy the club from
14 Mr. Blixseth, right?

15 A. It may have been prior to then, I don't recall. But it
16 was at least that long ago.

17 Q. Okay. And it was CrossHarbor who got Discovery Land
18 Company involved with the Yellowstone Club this past fall,
19 not Ms. Blixseth, right?

20 A. People have a different opinion of it. I mean we were
21 happy to have them in there, and I think Ms. Blixseth had a
22 relationship with them that preexisted our relationship
23 with her. And she was happy to have them in there.

24 Q. Okay.

25 MR. SAUNDERS: May I approach, Your Honor?

1 THE COURT: You may.

2 MR. SAUNDERS: Thank you, Your Honor --
3 (inaudible, out of range of microphone.)

4 THE COURT: Thank you. You may approach.

5 MR. SAUNDERS: Your Honor, this is a binder of
6 documents that we received in discovery after we filed our
7 exhibit list on Friday night, so they haven't been filed
8 electronically. I would like to try to move some of them
9 into evidence in the course of the proceedings; and if they
10 are admitted, then we'll file them electronically.

11 They're also all designated as confidential by
12 CrossHarbor, so I'll need to get Mr. Moore's permission
13 under the protective order to read them or have them
14 admitted. But we'll deal with that one by one.

15 Exhibit 27 was the first one.

16 MR. MOORE: (Inaudible, out of range of
17 microphone.)

18 MR. SAUNDERS: I understand Mr. Moore to have no
19 objection.

20 Q. (By Mr. Saunders) Do you have Tab 27?

21 A. I do.

22 Q. Okay. This is an e-mail exchange between you and
23 Michael Meldman of Discovery Land Company, right?

24 A. That's correct.

25 Q. Okay. And you wrote -- this is on Wednesday, November

1 12th, which is the same day of a court hearing, I believe,
2 in this case:

3 "It is clear from all of the written commentary
4 back from the MT courts that both CH and DLC are viewed
5 adversarial by Skadden. Edra also testified that DLC was
6 never part of any CH plan and that she brought them in.
7 Said she studied our business plan(?) and DLC and was not
8 part of that equation."

9 You wrote those words, right?

10 A. Yeah.

11 Q. And Mr. Meldman's response in one word was "perjury",
12 right?

13 A. I'm sure jokingly, yes.

14 Q. Okay. That's the word he wrote?

15 A. It is. But what's the --

16 Q. Okay. Did you ever tell the Court that you thought
17 Ms. Blixseth's testimony was incorrect on that day?

18 A. I don't --

19 Q. "Yes" or "no", sir.

20 A. Did I ever tell the Court?

21 Q. That's --

22 A. What would be, what would be my opportunity to tell the
23 Court?

24 Q. Did you ever the tell the Court that you thought that
25 her testimony on that day was incorrect?

1 A. No.

2 Q. Okay. The agreement to form that we've had some
3 testimony about in this case, that gave CrossHarbor
4 important control rights over the Yellowstone Club, right?

5 A. Prior to the bankruptcies, that's correct.

6 Q. Okay.

7 A. Not -- control rights?

8 Q. Yeah.

9 A. I don't know. You would have to -- it's all -- that's
10 a relative term.

11 Q. Okay. Could you take a look at Exhibit 16?

12 A. Yeah.

13 Q. This is an e-mail exchange between -- it starts off
14 between you and Ms. Blixseth on Wednesday, August 13th.
15 That was the day that you financed her closing on the
16 marital settlement agreement, right?

17 A. I don't know if that was specifically the day, but I'll
18 take your word for it.

19 Q. Okay. And you respond to an e-mail from Ms. Blixseth
20 with an e-mail to Mr. Harris at 8:52 p.m. Do you see that?

21 A. Yeah.

22 Q. Mr. Harris, he's with CrossHarbor, too, right?

23 A. He's a consultant for CrossHarbor.

24 Q. Okay. And you told Mr. Harris: "Don't let her out of
25 your sight!"

1 Do you see that?

2 A. Right.

3 Q. Okay. And then Mr. Harris responded later that
4 evening:

5 "She is blowing me off completely on the
6 announcement- don't know if its because she doesn't want to
7 acknowledge our control/involvement or if she is just to
8 tired to deal."

9 You wrote those words, right?

10 A. I did. This was in regard to a -- oh, that's Joe's to
11 me, I believe.

12 Q. Fair enough. Mr. Harris wrote those words?

13 A. And that was in regards to a press release that we had
14 authority over, and we were trying to get it out before the
15 end of the day. And that's all it was in regard to.

16 Q. Okay. And your response to Mr. Harris was: "She will
17 come around - she has to."

18 Right? That's what you wrote?

19 A. Yes, because she was obligated to get our approval over
20 the press release.

21 MR. SAUNDERS: Your Honor, I would move
22 Exhibit 16 into evidence.

23 THE COURT: Any objection?

24 UNIDENTIFIED SPEAKER: No, Your Honor.

25 THE COURT: Exhibit 16 is admitted.

1 EXHIBIT 16 ADMITTED INTO EVIDENCE

2 BY MR. SAUNDERS:

3 Q. Now, Ms. Blixseth personally and her company, BGI, were
4 both parties to the agreement to form, right?

5 A. That's correct.

6 Q. And they are not debtors, right?

7 A. In this case?

8 Q. Right.

9 A. I don't -- no, correct.

10 Q. Okay. And the agreement to form has never been
11 terminated, right?

12 A. Not formally, no.

13 Q. Okay. And you've never canceled the mortgage that you
14 have on Ms. Blixseth's personal real estate that secures
15 her compliance with the agreement to form, right?

16 A. No.

17 Q. Correct?

18 A. I said "no".

19 Q. Okay. "No" meaning you have never done it?

20 A. I have not canceled the mortgage --

21 Q. Okay.

22 A. -- which was your question.

23 Q. Great. The loan, the \$35 million loan to Ms. Blixseth
24 was originally due to be repaid on September 30, 2008,
25 right?

1 A. Correct.

2 Q. Okay. And on September 29th, you asked Ms. Blixseth to
3 have a private conversation with you about the loan, right?

4 A. I may well have.

5 Q. Okay.

6 A. I don't know if I did or --

7 Q. Could you take a look at Tab 17? This is an e-mail
8 from you to Ms. Blixseth on Monday, September 29th. And
9 you wrote: "Let me know what time we can talk this
10 afternoon about the \$35m loan. Just needs to be you
11 and I."

12 You wrote those words, right?

13 A. That was in response to her request for a meeting with
14 me about the loan without lawyers. She wanted to talk
15 about the fact that it wasn't going to be paid back the
16 following day.

17 Q. Okay.

18 MR. SAUNDERS: Your Honor, I would move
19 Exhibit 17 into evidence.

20 THE COURT: Any objection?

21 UNIDENTIFIED SPEAKER: Only as to relevance, Your
22 Honor.

23 THE COURT: Exhibit 17 is admitted.

24 EXHIBIT 17 ADMITTED INTO EVIDENCE

25 BY MR. SAUNDERS:

1 Q. Now, in October of 2008, CrossHarbor was closely
2 involved in preparing the Yellowstone Club for bankruptcy,
3 right?

4 A. I don't know if we were closely involved. At the time,
5 it was becoming clear that there would not be a closing on
6 Farcheville, there was not going to be a financing from
7 Archer. The club was hopelessly insolvent. We were trying
8 to get Edra to focus on what she was going to have to deal
9 with. And we were having conversations her and Credit
10 Suisse about how they could organize a more controlled
11 crash rather than an uncontrolled crash.

12 Q. Okay. And you and CrossHarbor formed a plan,
13 prepetition, in October of 2008 to use bankruptcy as a way
14 to acquire or address the Yellowstone Club secured debt and
15 come out on the other side of the bankruptcy owning the
16 club, correct?

17 A. No, that's not correct.

18 Q. No?

19 A. No.

20 Q. Okay. Could you please turn to exhibit --

21 THE COURT: You might want to be a little louder,
22 because I'm not sure if that answer was even picked up.

23 Q. (By Mr. Saunders) Could you please turn to Exhibit 18?

24 Exhibit 18 is an e-mail from Mr. Harris to Mr. Arenson.

25 And Mr. Arenson is Discovery Land Company, right?

1 A. That's correct.

2 Q. Okay. And he says: "Hey, Joey - Could you email Matt
3 and I the current version of DLC's business plan as we get
4 prepared for a pre-pack filing?"

5 Right?

6 A. That's what it says, that's correct.

7 Q. Okay.

8 MR. SAUNDERS: Your Honor, I would move
9 Exhibit 18 into evidence.

10 THE COURT: Exhibit 18 is admitted.

11 EXHIBIT 18 ADMITTED INTO EVIDENCE

12 BY MR. SAUNDERS:

13 Q. Okay. Could you turn to Exhibit 19, please?

14 Exhibit 19 is a multipage e-mail chain with a Bates No.

15 CHE04659 through 4662. Could you turn to the last e-mail,
16 which is, of course, the first one chronologically on the
17 last page?

18 This is an e-mail sent from Schuyler Joyner on Friday,
19 October 24th, to Joe Harris and Matthew Kidd. Mr. Joyner
20 is with Discovery Land Company, right?

21 A. That's correct.

22 Q. Okay. And he writes (quoted as recorded):

23 "Mat and Joe, please find the attached worksheet
24 with the changes we discussed on the BK atty call and your
25 other comments.

1 "There are two files. One has just the line
2 items and columns that need to be shown with fixed numbers
3 for purposes of sharing with the other creditors. The
4 other is the full version for our internal use. Sky."

5 Do you see that?

6 A. I do.

7 Q. Okay. So Discovery Land Company in October was sharing
8 with CrossHarbor their internal models for the Yellowstone
9 Club, right?

10 A. We had put together a combined model in early September
11 for the work that was going to be done under the agreement
12 to form.

13 Q. Okay. Can you look at the page earlier, the one with
14 the Bates No. 4661? At the top of the page is an e-mail
15 from Joe Harris to Tim Barns. Do you see that?

16 A. I do.

17 Q. Okay. Mr. Harris writes: "Tim - Attached is a
18 spreadsheet with multiple tabs that we've been working on
19 with Discovery Land, who is currently managing the Club."

20 Did I read that right?

21 A. Hm-hmm.

22 Q. Okay. And then the second paragraph, you write: "We
23 should also brainstorm about how we can best" --

24 A. I'm sorry, you said I write?

25 Q. I'm sorry, Mr. Harris writes.

1 A. Okay.

2 Q. Correct, thank you. The second paragraph --

3 A. He was working for Ms. Blixseth at the time, right?

4 Q. Okay. He's a consultant to CrossHarbor, right?

5 A. Well, he was employed as the -- you know, working at
6 the club, helping her out.

7 Q. Okay. Was he still serving as interim CEO in October
8 of --

9 A. I don't, I don't know the dates.

10 Q. -- of 2008?

11 A. He may technically have been. I don't know.

12 Q. Okay. The second paragraph (quoted as recorded): "We
13 should also brainstorm about how we can best work together
14 on the larger strategy of acquiring the bonds at a
15 substantial discount to face, as well as the need for new
16 money- probably in the form of preferred equity in the
17 \$100 million range- and strategies for dealing with the
18 lender group and the timing of the filing. Sam and I" --
19 do you think you're Sam?

20 A. I assume so, yes.

21 Q. Okay (quoted as recorded): "Sam and I were thinking
22 broadly of a 90 percent Bain/10 percent CrossHarbor capital
23 contribution commitment, with some form of promote to Cross
24 Harbor for doing the work and managing through the BK and
25 beyond."

1 Do you think "BK" means "bankruptcy"?

2 A. I assume so, yeah.

3 Q. Okay. (Quoted as recorded): "We received a call from
4 Sandelman yesterday inquiring as to whether we might want
5 to buy out their position, so the opportunities are already
6 beginning to present themselves now that the lender group
7 has been informed of the insolvency of their borrower."

8 Did I read that right?

9 A. You do.

10 MR. SAUNDERS: Okay. Your Honor, I would move
11 Exhibit 19 into evidence.

12 THE COURT: Any objection?

13 UNIDENTIFIED SPEAKER: No objection, Your Honor.

14 THE COURT: Nineteen is admitted.

15 EXHIBIT 19 ADMITTED INTO EVIDENCE

16 BY MR. SAUNDERS:

17 Q. Could you turn to Exhibit 20, please?

18 MR. SAUNDERS: Paul?

19 MR. MOORE: That's fine.

20 Q. (By Mr. Saunders) Exhibit 20 is two consecutive
21 e-mails with the Bates Nos. CHE04632 and 4633. The first
22 one is an exchange between you and Mr. Harris and Mr. Kidd
23 on October 27th.

24 And in the first e-mail you write: "I am going to
25 write the 'plan' tonight to solve the entire YC debacle.

1 It could be brilliant."

2 You wrote those words, right?

3 A. I did.

4 Q. Mr. Harris responded, Mr. Harris responded (quoted as
5 recorded): Sounds dangerous. And possibly evil. It could
6 be worth over 1 billion dollars."

7 A. Right.

8 Q. "I hope it includes a dip and filing by friday."

9 A. That's his --

10 Q. That's what he said to you, right?

11 A. Right, that's his --

12 Q. And you wrote back?

13 A. -- his Dr. Evil joke.

14 Q. And you wrote back: "It is brilliant," right?

15 A. Yes, that's my --

16 Q. Okay.

17 A. -- response to his Dr. Evil joke.

18 Q. And on the next page, Mr. Kidd wrote: "Excellent...I
19 am working on proving out it's brilliance."

20 Right?

21 A. Mr. Kidd's response to the Dr. Evil joke.

22 MR. SAUNDERS: Okay. Could you turn to -- Your
23 Honor, I'd move Exhibit 20 into evidence, please.

24 THE COURT: Any objection?

25 UNIDENTIFIED SPEAKER: No, Your Honor.

1 THE COURT: Exhibit 20 is admitted.

2 EXHIBIT 20 ADMITTED INTO EVIDENCE

3 BY MR. SAUNDERS:

4 Q. Okay. Could you take a look at Exhibit 21, please,
5 sir?

6 Exhibit 21 is an e-mail from Mr. Kidd to you two days
7 later on October 29th?

8 A. That's correct.

9 Q. And he writes: "I thought that went well...basically
10 we need to help Edra get the club into BK."

11 Again, any doubt in your mind that "BK" is
12 "bankruptcy"?

13 A. No, I have no doubt.

14 Q. "(Really I think we've done that), let the bondholders
15 squirm a bit and realize what they have (hopefully DLC
16 helped with that today), and then we position ourselves as
17 part of the solution (that call was step 1). New capital
18 should come from the members, and you can deliver that.
19 DLC is with you. We are in a good position. I think we
20 can get the deal done that you proposed the other night,
21 although there are sure to be twists and turns along the
22 way."

23 That's what Mr. Kidd wrote to you, right?

24 A. He did.

25 Q. Okay. And that deal that you had proposed the other

1 night is the deal that was referred to in Exhibit 20,
2 right?

3 A. No. Exhibit 20 is not referring to any deal. I'm sure
4 there -- I mean these -- there are, there are probably 30
5 discussions ongoing between Credit Suisse, ourselves, any
6 number of the Credit Suisse note holders who had reached
7 out to us. I mean any number of things were going on at
8 the time.

9 MR. SAUNDERS: Your Honor, I would move
10 Exhibit 21 into evidence.

11 THE COURT: Any objection?

12 UNIDENTIFIED SPEAKER: No objection, Your Honor.

13 THE COURT: Twenty-one is admitted.

14 EXHIBIT 21 ADMITTED INTO EVIDENCE

15 BY MR. SAUNDERS:

16 Q. Okay. Now, postpetition, you continued to work
17 together with Ms. Blixseth and Discovery Land Company to
18 try to accomplish the plan that you had formulated in
19 October, right?

20 A. No.

21 Q. Okay. Could you take --

22 A. The plan in --

23 Q. Could you take a look at Exhibit 22, please?

24 THE COURT: Did you allow him to answer the
25 question?

1 MR. SAUNDERS: I'm sorry, Your Honor.

2 THE WITNESS: He doesn't want me to answer the
3 question.

4 THE COURT: Okay.

5 Q. (By Mr. Saunders) Do you have Exhibit 22, sir?

6 A. I have it.

7 Q. Okay.

8 MR. SAUNDERS: Mr. Moore?

9 MR. MOORE: No problem.

10 Q. (By Mr. Saunders) Okay. Exhibit 22 is an e-mail from
11 you to Ms. Blixseth on Friday, November 7th. And you write
12 to her:

13 "Edra, it is really unfair that Joe didn't
14 respect the confidentiality of our DIP terms sheet,
15 particularly in the context of asking us not to do so with
16 the member group, etc... I need to have confidence that we
17 are not being played or shopped. This is not in the spirit
18 of trying to work together."

19 You wrote those words, right?

20 A. I did, in response to Edra's request similar to the
21 e-mail back from Bain that we provide or look into
22 providing her alternative DIP financing at the request of
23 Mr. Yankauer in a telephone call in which I participated
24 with Ms. Blixseth.

25 MR. SAUNDERS: Okay. Your Honor, I would move

1 Exhibit 22 into evidence.

2 UNIDENTIFIED SPEAKER: No objection, Your Honor.

3 THE COURT: Exhibit 22 is admitted.

4 EXHIBIT 22 ADMITTED INTO EVIDENCE

5 BY MR. SAUNDERS:

6 Q. Could you turn to Exhibit 23, please, sir?

7 A. Sure.

8 Q. Okay. Exhibit 23 is an e-mail from you to Mr. Meldman
9 of Discovery Land and Ms. Blixseth and Mr. Arenson of
10 Discovery Land on November 8th, right?

11 A. Correct.

12 Q. Okay. And you write: "We need to be on message in
13 this thing or it won't work. We are either together or
14 not. At this point we have to decide if we are and moving
15 forward together."

16 You wrote those words, right?

17 A. In regard to what?

18 Q. Did you write those words in this e-mail, sir? That's
19 all I'm asking.

20 A. I did, but I --

21 Q. Okay.

22 A. -- you know, I don't know what it's referring to.

23 Q. Okay. Could you go to the next-to-last paragraph, sir?
24 It says: "Assuming that is the case, we must all be on the
25 same message and all (including lawyers) be aggressively

1 advocating in one singular direction."

2 Did you write those words?

3 A. That's correct. And this was in response to having a
4 DIP that actually would fund the whole ski season and not a
5 DIP that would last for 21 days or a DIP that would last
6 for a short period of time leading to the liquidation of
7 the club, which is not in my best interest.

8 MR. SAUNDERS: Okay. Your Honor, I'd move
9 Exhibit 23 into evidence.

10 UNIDENTIFIED SPEAKER: No objection, Your Honor.

11 THE COURT: Twenty-three is admitted.

12 EXHIBIT 23 ADMITTED INTO EVIDENCE

13 BY MR. SAUNDERS:

14 Q. Okay. Could you turn to Exhibit 24, please?

15 Exhibit 24 is an e-mail exchange between you and
16 Ms. Blixseth and Mr. Meldman of Discovery Land on November
17 9th, right?

18 A. That's correct.

19 Q. Okay. And you write in the first e-mail at the bottom:

20 "I feel that I need to point out that if CS'
21 terms ultimately prohibit you from filing a plan, or
22 restrict you from filing a plan that is not acceptable to
23 them (all likely), then it effectively leaves out on the
24 street to fend for ourselves and opens the doors to any
25 number of third parties coming in (eg Tim), likely

1 alienating the membership once and for all."

2 You wrote those words, right?

3 A. I did, yeah.

4 Q. Okay. The next paragraph: "I understand that there
5 may not be any choice on your part, but it is important
6 that people know the direction that CS is driving things
7 for all parties involved. If their efforts towards
8 disintermediation of CrossHarbor are successful, we are
9 going to be in a difficult spot and a lot of good will is
10 down the drain."

11 You wrote those words, as well, sir?

12 A. I absolutely did.

13 Q. Okay. The next-to-last paragraph: "They will be" --

14 A. I'm sorry, you skipped over one paragraph. Could we
15 read that one, too?

16 Q. Well, I get to ask the questions.

17 A. (Quoted as recorded): "I am happy for CS to provide
18 the DIP if it meets peoples requirements for operating the
19 YC and protecting our property values. I don't know where
20 the same hearty battle with them is that Joe put up with us
21 about 'assurances that we will be able to fund the entire
22 season, sit down at the table, etc, etc.....'?"

23 Q. And the next to last paragraph says: "They will be
24 inside the tent, and that will be the beginning of the end
25 unless people come at them with both barrels loaded."

1 You wrote those words, right?

2 A. I did, yeah, absolutely.

3 Q. And the "them" is CS, right?

4 A. Yeah.

5 Q. Okay.

6 MR. SAUNDERS: Your Honor, I would move
7 Exhibit 24 into evidence.

8 THE WITNESS: (Quoted as recorded): "And they
9 will be agreeing to be prohibited from the fight for 28
10 days of money that doesn't even get the ski season open for
11 the season," which was the whole point.

12 And my contention was and continues to be today
13 that they never had any intention to fund the second half
14 of the ski season. It was a complete ruse to get around
15 the issue of foreclosing on the property.

16 MR. SAUNDERS: Your Honor, I'm trying to hit Your
17 Honor's time deadline as quickly as possible.

18 THE WITNESS: I'm sure.

19 MR. SAUNDERS: I'm just asking "yes" or "no"
20 questions.

21 THE COURT: Any objection to 24?

22 UNIDENTIFIED SPEAKER: No, Your Honor, as long as
23 it's admitted in its entirety.

24 THE WITNESS: Yeah.

25 MR. SAUNDERS: Of course, Your Honor.

1 THE COURT: They're all admitted in their
2 entirety.

3 MR. SAUNDERS: Of course, Your Honor.

4 UNIDENTIFIED SPEAKER: Thank you.

5 Q. (By Mr. Saunders) Could you turn to Exhibit 25,
6 please?

7 THE COURT: We could just stipulate that they're
8 all admitted.

9 THE WITNESS: Why don't we do that.

10 MR. SAUNDERS: Okay, we don't have any objection
11 to that.

12 THE COURT: Mr. Saunders, we could just stipulate
13 that they're all admitted and save you the time.

14 MR. SAUNDERS: That would be great. I'm just
15 trying to make sure that Mr. Moore doesn't have any
16 confidentiality objection.

17 MR. MOORE: As long as I can look through them,
18 Your Honor.

19 THE COURT: Certainly. Why don't you take a
20 moment.

21 MR. MOORE: And Mr. Byrne, perhaps, too, just to
22 both look through them.

23 THE WITNESS: Take a look at them? Sure.

24 MR. SAUNDERS: You're still waiting for
25 Mr. Byrne, or any objection?

1 I don't think there's any objection, Your Honor.

2 THE COURT: No objection?

3 MR. MOORE: No, Your Honor. I would just ask if
4 looking at this you would take this into consideration in
5 your order regarding the \$1 million of further discovery,
6 because we obviously haven't tried to hide anything. If
7 this is what we're looking for, I think it's an incredible
8 waste of money to --

9 THE COURT: Okay.

10 MR. MOORE: -- say "ah-ha" for these things.

11 Q. (By Mr. Saunders) Could you take a look at Exhibit 25,
12 please, sir?

13 MR. MOORE: I thought we were done.

14 THE COURT: Well, just a moment. Let me get
15 these exhibits admitted that have been agreed to.

16 MR. SAUNDERS: I apologize, Your Honor.

17 THE COURT: So we're looking at 25 through 32,
18 correct?

19 MR. SAUNDERS: Yes, Your Honor.

20 THE COURT: And what's at the beginning? I guess
21 it was only 15.

22 MR. SAUNDERS: It started with --

23 THE COURT: You started with 16, I think, unless
24 I'm missing.

25 MR. SAUNDERS: I think we started with 15 because

1 there were 14 on our original exhibit list that was filed
2 Friday night.

3 THE COURT: Okay. We'll admit 15, as well.

4 EXHIBITS 15 and 25 - 32 ADMITTED INTO EVIDENCE

5 THE COURT: You may proceed.

6 BY MR. SAUNDERS:

7 Q. Okay. Would you turn to -- well, let me ask you a
8 question first: One of your goals at the outset of the
9 bankruptcy case was to try to use Discovery Land Company to
10 deter bondholders from making a DIP, right?

11 A. How is that -- no. Deter the bondholders --

12 Q. Correct.

13 A. -- from making a DIP?

14 Q. Right.

15 A. How would I do that?

16 Q. Okay. Well, let's take a look. Take a look at Tab 26.
17 The last e-mail in Tab 26 is an e-mail to Mr. Meldman of
18 Discovery Land Company. You'll see: "I figured - Sky
19 previewed." That's a follow-up.

20 And then you write: "I do want Edra to get something
21 here, and I think we can help her get insulated at the end
22 of the day, but tough love with the bondholders is going to
23 be necessary. Hopefully she will understand that when it
24 comes to DLC."

25 Did I read that right?

1 A. Okay.

2 Q. And in the third paragraph, you say: "The bondholders
3 are asking to get together in NYC next week without CS for
4 a 'very frank discussion' according to Babson. Sky and the
5 boys" -- and "Sky and the boys", that's Discovery Land
6 Company, right?

7 A. It may well be.

8 Q. Okay. You wrote it. Is that what you intended?

9 A. I don't really recall.

10 Q. Okay: "Sky and the boys just need to continue to
11 hammer into them what a mess that they have and that we can
12 get them out of it."

13 You wrote those words, right?

14 A. To make sure that they were paying attention to the
15 truth. And the point here was: We were invited by a group
16 of the sub-bondholders to meet them in New York to have a
17 discussion about the collateral. And this was in response
18 to -- but this has nothing to do with them and the DIP
19 whatsoever.

20 Q. The timing of that e-mail is after the initial, the
21 initial -- hearing on initial DIP and prior to the hearing
22 on the final DIP, right?

23 A. I don't know. I don't have a calendar in front of me.
24 But this was -- has nothing to do with the DIP; this had to
25 do with the requests of the bondholders to meet with us.

1 Q. Okay. And what did your statement about Sky and the
2 boys refer to, then?

3 A. I'm sure I was telling them that they needed to
4 continue to try to give them some education about what was
5 really going on with the collateral.

6 Q. Okay. With a hammer?

7 A. I said "to hammer into them". I mean that's a
8 statement of, you know --

9 Q. Okay. Could you take a look at Exhibit 30, please?
10 Exhibit 30 is an e-mail from you to Ms. Blixseth on January
11 8th. You wrote: "Ron didn't know we had plan approval in
12 the document."

13 What document were you referring to?

14 A. In the DIP loan.

15 Q. "And got way out in front of it with CS. Now he needs
16 to craft the story to fit the circumstances. It is ok if
17 he messed up, but not at our expense."

18 You wrote those words, right?

19 A. I did, yeah.

20 Q. And the third paragraph, you write: "This feels very
21 unfair and not at all what was agreed."

22 Right?

23 A. I've just got to read the whole thing in context. The
24 timeline -- I mean, yeah.

25 Q. Okay. And then the last paragraph, you write to

1 Ms. Blixseth: "If he needs cover" -- and the "he" there is
2 Ron, right?

3 A. That's correct.

4 Q. Okay: "If he needs cover we can give it to him, but
5 that is different than waiving rights. You should ask
6 counsel independently of Ron and Andy."

7 You wrote those words, right?

8 A. "Is different than waiving rights" -- yeah, I did. I
9 did, yeah.

10 Q. Okay. Could you take a look at Exhibit 32, please?
11 Exhibit 32 is an e-mail exchange between Brad Foster of FTI
12 -- Mr. Foster works for Mr. Greenspan, right?

13 A. He does.

14 Q. Okay, between Mr. Foster and Mr. Kidd and Joe Harris.
15 And do you see at the bottom of the page, Mr. Foster
16 writes:

17 "Guys - As part of the reorg plan and
18 accompanying disclosure statement, the debtors must file
19 financial projections. Rather than add your model to our
20 filing...I want to make my model mirror yours and present
21 the information in our format."

22 Did I read that right?

23 A. You did.

24 Q. Okay. And then two e-mails up from that, Mr. Foster
25 writes again to Mr. Kidd and Mr. Harris:

1 "It's the same format that's on the Datasite. CS
2 is familiar with the format and their advisors have been
3 tearing through it. My real goal is to create the optics
4 of separation between the debtors plan and CH."

5 Did I read that right?

6 A. I have no idea what the context was since I'm not party
7 to the e-mail.

8 MR. SAUNDERS: Nothing further, Your Honor.

9 THE COURT: Any cross-examination?

10 UNIDENTIFIED SPEAKER: No questions, Your Honor.

11 THE COURT: You may step down.

12 Next witness? Is that it?

13 MR. SAUNDERS: Respectful of Your Honor's
14 deadline --

15 THE COURT: Pardon?

16 MR. SAUNDERS: No further witnesses, Your Honor,
17 I guess.

18 THE COURT: Did you intend any witnesses, any
19 additional witnesses?

20 MR. SAUNDERS: I think we've made the decision
21 not to call any more, Your Honor.

22 THE COURT: Okay.

23 MR. REAM: Your Honor, I would like to call
24 Mr. Greenspan in rebuttal since the last e-mail that was
25 provided was actually not related to Mr. Byrne at all but

1 related to Mr. Foster.

2 THE COURT: Okay. Mr. Greenspan, I'll remind you
3 that you're still under oath.

4 REBUTTAL DIRECT EXAMINATION

5 BY MR. REAM:

6 Q. Do you still have an exhibit book up there?

7 A. I've never seen an exhibit book, but I heard what was
8 said. But, okay, I'll take --

9 MR. REAM: Well, may I just hand it to him?

10 THE COURT: You may approach. Here, I'll give
11 you mine.

12 MR. REAM: Thank you, Your Honor.

13 THE WITNESS: Thank you, Your Honor.

14 Q. (By Mr. Ream) So I think he was referring to the last
15 portion of this Exhibit 32.

16 A. Yes.

17 Q. Can you provide to the Court some context for this?

18 A. Yes. I mean we've just been working under incredible
19 deadlines. And at that time when this was done, we
20 wanted -- we needed a model because we thought it would
21 help bidders and expand the population if they actually
22 didn't have to go through all the effort we went through to
23 build a model. And so we've actually done that. We've
24 posted a live model to the data room. But what we didn't
25 think was appropriate was posting something that said

1 "CrossHarbor". They had done a lot more work and had a big
2 head start. I mean there was a lot of formulas, and so
3 forth, that we can copy over.

4 As I think the Court understands, we actually have
5 filed instead of -- I mean what I'm objecting to is the
6 implication was that we were somehow in cahoots with
7 CrossHarbor and all we've presented is CrossHarbor's.

8 We've actually filed two separate models. We filed one
9 that's designated as "CrossHarbor" and another that is
10 completely different. And we've borrowed some modelling
11 and some formulas. But the model that the debtor is
12 endorsing is not the CrossHarbor model. It's not their
13 assumptions, it's not their projections, it's not their
14 result. And we've offered, quite frankly, the world - all
15 the creditors and everybody else - to look at the two of
16 them and make their own decision. But there's absolutely
17 nothing that we were doing that was taking CrossHarbor's
18 and branding it as debtors' or any other way, shape, or
19 form.

20 MR. REAM: No further questions, Your Honor.

21 THE COURT: Any questions, Mr. Saunders?

22 MR. SAUNDERS: No, Your Honor.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: You may step down.

25 That concludes the witnesses?

1 MR. REAM: We have no further witnesses, Your
2 Honor.

3 THE COURT: Okay. I did want to make a note
4 regarding Mr. McKay's comment about the consolidation.
5 1123 does, certainly, provide that a plan can contain
6 provisions regarding consolidation. And I believe the
7 disclosure statement and the plan do have provisions
8 regarding that, so I don't see the need for a separate
9 motion. Everybody's familiar, there's no due process
10 issue. And we'll proceed on that basis.

11 As it relates to -- a concern I have that came up
12 kind of in our discussion with Mr. Greenspan and Mr. Warner
13 and the example and what happens on the offset credit bid,
14 etc., obviously, there's a proposed order here that people
15 want me to sign. I guess I have a question concerning
16 that, based upon what has been commented about as it
17 relates to the bidding and the credit bid, if there is one;
18 or the offset, if there is one, as to what cash is
19 required. It seemed Mr. Warner was wanting to have a
20 dollar amount.

21 MR. WARNER: Your Honor, with all due respect,
22 I'm not sure I wanted a dollar amount. I wanted to know
23 the debtors' mechanism to deal with it at the auction. And
24 the debtor had no mechanism. That was the problem.

25 THE COURT: And you guess I interjected myself at

1 that point and said, "We'll solve that problem if there's a
2 problem," right?

3 MR. WARNER: Well, I'm not sure, though, that
4 that solves the problem.

5 THE COURT: Okay. Well, before I sign an order,
6 that kind of leaves that hanging, unless everybody's
7 comfortable with it, as it relates to Provision M on the
8 credit bid and what has to be paid by Credit Suisse in the
9 event of bidding. Is there going to be an issue that we
10 still need to deal with and flush that out as we get closer
11 to the time for this bidding?

12 MR. REAM: We are going to have an allocation,
13 Your Honor, and that's how this will get determined. And
14 so we're prepared to move forward with Your Honor signing
15 the order and resolving that at that time.

16 THE COURT: Okay. So if, in fact, there's a
17 credit bid or an offset of \$310 million - just totally as
18 an example, 310 million - basically, there's no cash that
19 need to come into the equation?

20 MR. REAM: That's not accurate. There will be
21 two parts. One will be the \$30 million, the second will be
22 anything more than that that equates to the portion of the
23 noncollateral that you determine is allocated to the whole.

24 THE COURT: So there is, in fact, a cash amount
25 of 30 million plus the overbid bid of 3.5?

1 MR. REAM: Yes, Your Honor.

2 THE COURT: Okay. That was the point I was
3 trying to make earlier, that there is some cash that's --

4 MR. REAM: Absolutely, Your Honor.

5 MR. CHEHI: You know, the concern I have here,
6 Your Honor, is that the -- this discussion is mixing apples
7 and oranges. Credit bidding is permitted under the
8 bankruptcy code when one is bidding for one's collateral.
9 We're talking about an acquisition of equity in the
10 reorganized company --

11 THE COURT: I understand.

12 MR. CHEHI: -- and some post-auction allocation
13 of value as between some portion of assets underlying the
14 equity and some other portion of assets underlying the --
15 in the entity that the equity covers. And in working from
16 that assumption that that is an appropriate division of, I
17 guess, purchase price consideration at the end of the day,
18 back to "what can we credit bid for and what do we have to
19 pay in cash?" I think that's a problem.

20 I have not heard that everyone -- all the parties
21 in interest here have agreed that we have a right to credit
22 bid apart from lien validity, validity of claims, allowance
23 of claims.

24 THE COURT: Well, and this Court hasn't decided
25 you do, either.

1 MR. CHEHI: Right, right. You know, our big
2 concerns with the procedures, Your Honor, are some of the
3 same concerns that we had with the original procedures and
4 the concerns, I think, that the Court expressed in
5 rejecting the original procedures. And that was that the
6 entire procedure is geared toward allowing CrossHarbor and
7 Discovery Land Company, through the plan process, to
8 succeed at gaining control of the Yellowstone Club assets,
9 substantially all of the debtors' assets.

10 Given the testimony today and the record that
11 shows that there's been a long-standing involvement which
12 had not been previously disclosed to the Court and, in
13 fact, notwithstanding all the testimony of the DIP
14 financing hearings about how there were no arrangements
15 between the parties, how Discovery Land Company came in
16 late in the process, how all there was was this MOU and the
17 agreement to form all disclosed, you get a different
18 picture of the many months of the prior last year in which
19 there was an agreement, an arrangement, at least as of
20 February, if not earlier, from Mr. Byrne's testimony --

21 THE COURT: Well, I guess we haven't had the
22 benefit of the e-mail exchanges between your people.

23 MR. CHEHI: In what sense, Your Honor?

24 THE COURT: Credit Suisse.

25 MR. CHEHI: And what would that have to do --

1 THE COURT: Well, you know, you point the finger
2 downstream or one way, and yet, obviously, in a complex
3 transaction like this, I would be shocked if there wasn't
4 concerns by Credit Suisse and CrossHarbor and members as to
5 where this thing was going in about August. And there's
6 probably been a flurry of activity prepetition. And I
7 guess what I'm looking at right now is how we get to the
8 end --

9 MR. CHEHI: I agree.

10 THE COURT: -- and to get some conclusion.

11 MR. CHEHI: I agree, Your Honor.

12 THE COURT: You know, we need to get some
13 conclusion because, otherwise, this thing is just hanging
14 up in the air and we've got about 15 balls bouncing.

15 MR. CHEHI: Let me suggest a conclusion or a
16 resolution of these immediate issues which we think would
17 end up in a fair process. And that is: Number 1,
18 CrossHarbor should not, as an insider and as a party that
19 has been deeply involved in doing due diligence and doing
20 transactions with these debtors for the last couple of
21 years at least, be entitled to a termination fee, a
22 break-up fee as a stalking-horse bidder that, in effect,
23 erects yet another obstacle to any other party who might be
24 interested in bidding on the plan configuration and the
25 proposal that they're putting on the table, the debtors.

1 THE COURT: See, the problem I have with this,
2 though: I haven't really heard anything to refute what I
3 have before me as far as what's the best way to go. I
4 haven't had anybody testify saying, "No it shouldn't be
5 done this way; it should be done this way."

6 All I hear is, "No, that's not the right way to
7 do it."

8 MR. CHEHI: I'm just saying, Your Honor, that
9 that should not be the only way that it gets done. And
10 that is what the procedures --

11 THE COURT: But nobody's given me any other
12 alternative.

13 MR. CHEHI: Well, Your Honor, we're all laboring
14 under exclusivity, No. 1 --

15 THE COURT: Well, but you can still, through
16 testimony and witnesses, establish what's a better bidding
17 solicitation procedure than what the debtor is proposing.

18 MR. CHEHI: Let the parties -- let the debtors
19 set up a deadline for bids. Let them set up whatever
20 qualification for bidders they want to set up so that
21 you're dealing with real people. Make sure that there's a
22 level playing field for any of these interested parties
23 that CB Richard Ellis, apparently, has located in the last,
24 you know, couple of days - and anybody else, for that
25 matter - so that they can throw their hat in and make

1 expressions of interest to accomplish a transaction but not
2 just the transaction that the plan proposes, the sale of
3 equity. That has a lot of risks because that plan may not
4 be confirmable.

5 Number 2, it is not the only way to reorganize
6 companies. A sale of the equity of a reorganized company
7 is just one of a great variety of ways to reorganize
8 companies, to capitalize a reorganized company, to
9 transition ownership of the company to someone who wants to
10 invest in it. And if these sale procedures do not permit
11 those all alternatives, then we're fine with that.

12 And it should be a level playing field.
13 CrossHarbor doesn't need to have any greater advantage than
14 it already has. The debtors' own motions to approve these
15 procedures admit that one of the major issues in the whole
16 process of selling and marketing these assets or businesses
17 or equity is the fact that CrossHarbor is perceived to be
18 in control, have had a great head start on a lot of other
19 parties. And that dampens enthusiasm from competing
20 parties, especially if they're going to be constrained to
21 bid against CrossHarbor on its terms under its plan.

22 If there are other possible proposals that can be
23 made over the next, you know, 60 days or whatever the time
24 period is remaining, the Court should authorize procedures
25 that accommodate that and not do what was done with the

1 application to employ CB Richard Ellis and these bidding
2 procedures, the new renewed one as much as the original
3 ones, which is restrict the entire transactional
4 possibilities to the plan that's on the table, the capital
5 structure that the debtors have decided with CrossHarbor is
6 the right way to go. We think that it should be a fair and
7 level playing field. There's no need for the break-up fee.

8 CrossHarbor's fully invested in this case and in
9 this business and it was long before these cases were
10 commenced. They're not going anywhere. They're going to
11 be at the table to bid. We, our client and its
12 constituents, are likely to be there in some capacity, but
13 there are going to be third parties who will be involved,
14 can be involved working with the lenders, can be involved
15 working with other parties. They could bring in their own
16 financing to make proposals to either outbid CrossHarbor on
17 its terms or propose an alternative transaction which
18 doesn't mean that, in that alternative transaction, the
19 business burns down, the Yellowstone Club goes away. I'm
20 talking about a successful reorganization. It happens all
21 the time. Buyers come in and buy substantially all the
22 assets, and they assume all the membership agreements,
23 assume all the contracts of a business, and it goes on from
24 there.

25 It does not have to be done in the context of a

1 sale of the equity, but it's being done that way for a
2 number of reasons. One is to make it more difficult for
3 the lenders to credit bid. It makes it more difficult for
4 other third parties to make competing proposals. And that
5 was the spirit, we thought, of the last order Your Honor
6 entered on the initial bidding procedures.

7 And we came here today to say, "Let's get CB
8 Richard Ellis out there marketing, but let's not confine
9 them to marketing the equity in the company. Let them go
10 out there and talk about any and all proposals people might
11 want to make within a short period of time. Let them talk
12 to the lenders, let them talk to all the parties in
13 interest. And if there's another alternative to the
14 CrossHarbor plan, then you're going to have some
15 competitive bidding." And the debtors can decide along
16 with the Court and the other parties in interest whether --
17 the CrossHarbor proposal, as it might be made at the
18 auction, an alternative proposal, a different transaction
19 structure, which is the highest-valued outcome in the case.

20 And if in the course of this process there's an
21 opportunity to essentially resolve these so-called
22 "litigation issues" involving our claims, all the better.
23 There may be room for a consensual outcome. But I can
24 assure you, Your Honor, that the plan construct that is on
25 the table right now is not one that accommodates a

1 consensual outcome for our claims, and so we are going to
2 be in the position of having to resist it. And we're going
3 to go through this litigation over the claims and the
4 valuation.

5 There are a lot of confirmation issues that maybe
6 we can say, "We'll take care of all those at the
7 confirmation hearing." We may get to the confirmation
8 hearing and, as a matter of law, whatever everybody spent
9 the last, you know, 60 days or more trying to accomplish
10 just can't get done. That's why you need to have
11 flexibility to propose other alternatives. And through
12 that, that will bring the parties together to have a --
13 reach an agreement on a consensual resolution. That's the
14 way to proceed. I think that's the right way to go.

15 I think adjust the CBRE employment order today.
16 You don't need to approve the bidding procedures today.
17 Let the debtors come back with a streamlined version of
18 bidding procedures that accommodate different transactional
19 possibilities, and don't create another barrier to
20 competitive bidding by forcing all offers to come in
21 through the CrossHarbor plan door and be subject to a
22 CrossHarbor break-up fee. That's all we're asking for is a
23 level playing field.

24 THE COURT: Thank you. Based upon the record
25 before me, the testimony, the motion to reconsider the

1 appointment of CB Richard Ellis is granted in part and
2 denied in part. I'm going to qualify.

3 I do want the company to proceed with robust
4 marketing, obviously. Obviously, it calls for an equity
5 purchaser. However, I want the professional team to also
6 see what, what might come in just from an asset standpoint.
7 I mean if anybody approaches them about an asset prospect,
8 I guess I want to know about that so that we broaden their
9 scope a bit to include and look at that. However, as it
10 relates to the equity interest sale, I want that to go
11 forward, as well.

12 As it relates to the bidding and solicitation,
13 given the proposal before me, the record, the extensive
14 testimony that we've had, the revisions that have been made
15 to the agreement -- and I suspect this has been presented
16 in PDF.

17 Mr. Patten, is there a WordPerfect document, as
18 well?

19 MR. PATTEN: I believe we filed a WordPerfect
20 copy when we filed the order -- not "filed it", but
21 delivered it to the Court in the usual manner.

22 THE COURT: Okay, okay. In that, obviously in
23 Paragraph 7, there's a reference and a date for disclosure
24 statement hearing that will need to be filled in.

25 Looking at the dates, we also have the motion for

1 valuation. We already have the motion to modify set for
2 next Tuesday.

3 MR. PATTEN: Your Honor?

4 THE COURT: Mr. Patten.

5 MR. PATTEN: Anticipating that there will be
6 objections from at least one party to the disclosure
7 statement, if those objections were due, as I mentioned
8 earlier, whether it's Friday or Monday, if we got put on
9 the Missoula docket, then that would give us a couple more
10 days to address those objections before we're back in front
11 of the Court.

12 THE COURT: On the 12th?

13 MR. PATTEN: Yeah.

14 THE COURT: You know, rather than have you -- I
15 would put it onto the 13th, which is Friday. The reason I
16 say that is: With the Missoula hearing calendar, I don't
17 know how extensive it is right now, and I hate to have all
18 of, all of you sitting. Your time is too valuable to have
19 you sitting with other hearings. So I would move you to a
20 date and time certain on the 13th. That's my thought.

21 And maybe that goes along with the, the e-mail
22 commentary about Dr. Evil. We'll do it on the 13th. I'm
23 trying to make a little bit light on a long day here.

24 MR. PATTEN: Well, the original plan was filed on
25 Friday the 13th as well, Judge, so it would be fitting.

1 THE COURT: Yes, it was, at about midnight.

2 MR. PATTEN: 11:58, I think, Your Honor.

3 THE COURT: Yes, yes. My thought is to set those
4 for the 13th in Missoula. And that would be the valuation
5 -- let's see, valuation is a problematic thing. We do need
6 to deal with that.

7 MR. PATTEN: Your Honor, I need until April 1st
8 to have a report on value.

9 THE COURT: Yes, I know. Well, we have -- let's
10 see, is that a disclosure statement hearing in Palmer on
11 the 3rd?

12 MR. PATTEN: Your Honor, can't we just combine
13 this with the adversary proceeding?

14 THE COURT: I'm not sure if we can.

15 MR. CHEHI: It's a different cup of tea, Your
16 Honor. I think it's a, it's a contested matter, it's not
17 an adversary proceeding, and it's a valuation hearing.

18 And to the extent that there's a disclosure
19 statement without the valuation occurring, I think that's
20 problematic. It's going to be important for us, again, in
21 terms of 1111(b) and giving, you know, all the parties
22 notice of what the fundamental economics are -- there are
23 economic risks associated with, with our claims in these
24 cases.

25 THE COURT: I'm looking for some dates here. I

1 may not have them. On my order, I had some dates
2 photocopied. No, that's not it.

3 Here they are. You know, I was thinking about
4 setting it for April 7th. It's a Tuesday. It's not ideal.
5 We've got the amended disclosure statement --

6 MR. CHEHI: Your Honor, we would recommend and
7 request that we have -- you know, combine the disclosure
8 statement hearing with the, with the valuation. And we can
9 work on the disclosure statement. We hear Your Honor
10 about, you know, what's in the disclosure statement. The
11 important issues for us with the disclosure statement are
12 amount allowability and value of claim. And I think we can
13 get through value of collateral in time for having the
14 disclosure statement hearing, and the parties can work that
15 out. We'll exercise best efforts to agree or not with
16 Mr. Patten about what's in his disclosure statement. And
17 it's his to put in whatever he wants to put in. We're
18 raising issues so that the Court knows about them. And if
19 you wanted to leave them until confirmation, that's fine,
20 too.

21 THE COURT: Mr. Patten, you had some
22 consultation.

23 MR. PATTEN: Well, I'm trying to figure out --
24 I'm trying to calculate backwards from when the
25 confirmation hearing would be. But, Your Honor, the total

1 page numbers of the plan and disclosure statement are --

2 THE COURT: I know.

3 MR. PATTEN: -- 200 or 300 or 400 pages, and we
4 have lots of creditors. And there's going to be a
5 substantial printing job to get that out and in the mail.

6 THE COURT: Yeah.

7 MR. PATTEN: So we would need time after the
8 disclosure statement's approved to do that. It isn't going
9 to be the next day. It's going to have to be --

10 THE COURT: It really needs to be pushed. We
11 need to push it closer.

12 MR. CHEHI: Another thing that can be done, Your
13 Honor, and has been done in other cases is you can prepare
14 a summary plan and disclosure statement that --

15 THE COURT: For mailing, yes.

16 MR. CHEHI: -- that contains, you know, the nuts
17 and bolts for interest to the garden-variety trade
18 creditors, and the like. And then you can have the
19 full-blown documents available for those who request them,
20 available electronically, and it will reduce the mailing
21 cost and the time it takes to actually do that.

22 THE COURT: The rule provides for that, so you
23 might want to take a look at that. Because that may
24 assist. I think you can send one to each of the classes,
25 even.

1 Well, we have, what, 21 days past the end of --
2 we're past April. We're into May, right -- yes. I would
3 say maybe let's put this on the 7th because that, then,
4 gives us the time. I'll tell you what: Obviously, it's
5 late and we've been here a long time. That's my thought is
6 to put it on the 7th. I will welcome any comments you have
7 through e-mail to Kelli as to date.

8 MR. PATTEN: So we're looking at waiving off the
9 hearing next week on the disclosure statement and pushing
10 that all off into April sometime? Is that --

11 THE COURT: Well, I was trying to tie that with
12 the valuation, but maybe we don't need to do the valuation
13 with the disclosure. We'll do the disclosure first, and
14 we'll get the valuation, then, done in April.

15 MR. PATTEN: Your Honor, the disclosure statement
16 describes the plan. And as I think I've said ad nauseam
17 today, the valuation is through the marketing.

18 THE COURT: I know, I know.

19 MR. PATTEN: And so --

20 THE COURT: I've heard that, I've heard that over
21 and over.

22 MR. PATTEN: I must have said it ad nauseam. But
23 I think that certainly permits getting the disclosure
24 statement out. We don't need to hold a disclosure
25 statement up for the valuation.

1 THE COURT: I think you're exactly right.

2 MR. CHEHI: Your Honor, the issue, though, as a
3 fundamental matter, and it really has material implications
4 for the confirmability of the plan and everything else,
5 notwithstanding everybody's arguments that it might not, is
6 that if this 1111(b) election will be made, it should not
7 have to be made before there's a valuation of the
8 collateral and, in fact, a determination of the allowance
9 of the claims. But the disclosure statement hearing,
10 unless the Court orders the 1111(b) election to be carried
11 beyond that, it has to be made by the end of the disclosure
12 statement hearing.

13 THE COURT: Right.

14 MR. CHEHI: The problem in this case is that the
15 implications of our exercising our right to make that
16 election will have profound consequences for the
17 confirmability of the plan and the outcome, the real
18 bricks-and-mortar outcome for this reorganized debtor. And
19 that's why I think it would be imprudent to go forward and
20 solicit acceptances with a disclosure statement that isn't
21 prominent about those issues. And you're not going to
22 really know how to -- what the magnitude of that issue is
23 until you have the valuation. And we think we could, we
24 could line all those up and be done with both of them by
25 April 7th or on April 7th because I don't think we're going

1 to have an a big dispute on the disclosure statement.

2 MR. WARNER: Your Honor, there's another issue.
3 With respect to the 1111, if the election is made and the
4 disclosure has already been approved and sent out,
5 creditors will not understand that they -- that election
6 will either force the debtor to make a drastically new
7 plan, hand collateral over to the lender under 1129(b) --
8 that implication is so important to put in the disclosure
9 statement because you will be voting on a plan that
10 theoretically could never or will never get confirmed
11 because the debtor won't even go forward if the election is
12 made. And so it's a cart-before-the-horse problem. And
13 that's why if you tie at least the valuation hearing and
14 the disclosure, you at least address that issue.

15 MR. PATTEN: Your Honor, can I add something?
16 Credit Suisse knows what they think their collateral is
17 worth. Why do we need to wait to make the 1111(b)
18 election? Make it now.

19 THE COURT: I hear you, and I don't disagree.
20 But if we do this on the 7th, that gives you adequate time
21 because we have until the 21st, or so, of May, right,
22 regarding approval of a disclosure statement and getting it
23 out to everybody? You've got six weeks.

24 MR. PATTEN: But let me add this, Your Honor:
25 When we get to the 7th, we still haven't tried whether or

1 not the unsecured creditors committee's claims against
2 Credit Suisse have merit.

3 THE COURT: That's right.

4 MR. PATTEN: And until that's done, we don't know
5 what the amount of their claim is; and until that's done,
6 they're going to tell us they can't make the 1111(b)
7 election.

8 MR. CHEHI: No, we're not going to say that.
9 What we're going to say is that we're going to know after
10 the valuation of our claims whether we're going to be
11 treated as fully secured or whether we're going to have a
12 deficiency claim and in what amount. And the size of that
13 deficiency claim - whether it's, you know, 10 million or
14 50 million or zero - is going to have a significant
15 implication for other general unsecured creditors who are
16 going to be taking from the same pot. And that's why it is
17 material not just to us, but to everyone else. And the
18 value is very important.

19 MR. PATTEN: But you don't need the Court to
20 value that claim. What you -- you can make the election.

21 THE COURT: Gentlemen, address your comments to
22 me.

23 MR. PATTEN: I apologize, Your Honor; and I
24 apologize to Mr. Chehi.

25 They don't need the Court to make the

1 determination of the amount of the claim. They get to make
2 the election.

3 THE COURT: Well, I guess I'm not so certain that
4 there's any problem with having it on the 7th.

5 MR. CHEHI: And I'll add this, Your Honor: In
6 the interest of peace and harmony, if there's any
7 opportunity for any global resolution of these cases short
8 of a contested knockdown, drag-out confirmation hearing,
9 and the like, which, you know, has risks for everybody, it
10 will come over the course of what I'll call this next month
11 before this disclosure state hearing. And if you push this
12 disclosure statement hearing ahead and we're just doing the
13 litigation and there's no opportunity for people to talk,
14 it will end up being a knockdown, drag-out with an
15 unpredictable out come for everybody.

16 THE COURT: Well, I'm going to set those for
17 April 7th.

18 MR. PATTEN: Both hearings, Your Honor?

19 THE COURT: Pardon?

20 MR. PATTEN: The disclosure statement hearing and
21 the --

22 THE COURT: And the disclosure and the valuation.

23 MR. PATTEN: Will the Court set a date by which
24 objections to the disclosure statement might be made?

25 THE COURT: Absolutely, absolutely.

1 MR. PATTEN: Thank you.

2 MR. CHEHI: And if we can ask the debtors to file
3 with the Court black-lined versions of their new documents
4 that they filed last night compared to the last version of
5 the plan that was out, you know, electronically CompareRite
6 versions so we can see what changes were made in the
7 documents, how the documents that were filed at midnight
8 last night vary from the ones that were filed a few days
9 earlier in the first plan, that would be helpful, I think,
10 to all the parties to know what the changes were.

11 MR. PATTEN: And we can do that, Your Honor. In
12 fact, I think when we filed the disclosure statement on
13 Monday, I sent -- I didn't file it with the Court, but I
14 sent everybody a black-lined copy -- all counsel of record,
15 anyway, a black-lined copy. So whether we file it with the
16 Court or we send it out electronically to everybody, that's
17 fine with us.

18 THE COURT: Why don't you do it electronically.
19 Because you'll probably catch everybody that way.

20 UNIDENTIFIED SPEAKER: Just so we know, would it
21 be more helpful to the Court and to parties and -- the
22 interim that we've filed was just to try and advise all of
23 the people that participated in the meeting of counsel last
24 week as to how far we had gotten by Monday, because we
25 wanted people to have an opportunity -- it would seem to me

1 that the better black-line is from the original one that
2 was filed on the 13th as opposed to the interim one.

3 THE COURT: Okay. Well, I'll let you decide
4 which is the better one to show as a comparison or to use
5 for a comparison. So then I guess that takes care of
6 anything for the 13th. And we'll still have the motion
7 with, what is it, GMAC? Is it GMAC?

8 MR. PATTEN: Your Honor, I think we'll work that
9 out, I'm pretty sure.

10 THE COURT: We'll leave that set for the 10th and
11 allow you to work it out. Any other dates up in the air?

12 Kelli, what about did we hear anything back from
13 Judge Peterson?

14 MS. HARRINGTON: Yes. Judge Peterson is not
15 available on April 2nd or April 6th through the 9th if
16 anybody's interested in him mediating. And he would
17 require that position statements be filed at least three
18 business days before a mediation.

19 MR. PATTEN: I apologize, Judge, I did not hear
20 that.

21 MS. HARRINGTON: He is not available on April 2nd
22 or April 6th through the 9th.

23 THE COURT: Did you hear that?

24 MR. PATTEN: Yes, yes.

25 THE COURT: April 2nd and 6th through the 9th

1 he's not available, but he is otherwise. So if you wish to
2 look at some mediation, discuss between yourselves what
3 might be an acceptable date to do that and then be in touch
4 with Kelli or Terry to get that lined up if you wish to do
5 that.

6 MR. CHEHI: We'll do that, Your Honor. And if he
7 has a requirement of position of papers, or whatever, I
8 think we just want to factor that in so we all have time to
9 do it in due course as opposed to on a rush basis.

10 THE COURT: Yes.

11 MR. CHEHI: And as far as a deadline for
12 objections to the disclosure statement, did you say that
13 you'll set one?

14 THE COURT: There will be one set.

15 MR. CHEHI: And that doesn't have to go way out.
16 You know, I think, you know, give us --

17 THE COURT: Five days before?

18 UNIDENTIFIED SPEAKER: Five days from now?

19 MR. CHEHI: Not five days from now, but why don't
20 we do, you know, the 15th, or something like that, to give
21 us an opportunity to actually look at your documents. And
22 I don't think your documents are entirely complete. So by
23 the time they get complete and --

24 THE COURT: So objections to the second amended
25 plan or disclosure statement need to be in by -- March 15th

1 is a Sunday, so why don't we go to the 16th of March. Does
2 that, then, give you some time to address those objections
3 prior to the 7th?

4 MR. PATTEN: That will work for us, Your Honor.

5 MR. CHEHI: And we'll make a good-faith effort
6 not to have outstanding disclosure statement objections
7 other than, you know, substantive things. You know,
8 whatever the language is, you know, we'll work that out.

9 THE COURT: I wouldn't expect anything less.

10 MR. PATTEN: Not to push my luck, Your Honor,
11 but --

12 THE COURT: Mr. Patten.

13 MR. PATTEN: -- I think it's important for the
14 parties here to --

15 THE COURT: I'm having a hard time hearing you.

16 MR. PATTEN: I'm sorry. Does the Court intend to
17 sign the bid procedures order with the modifications that
18 were -- the date changes that we've talked about?

19 THE COURT: I will probably do that when I step
20 off this bench.

21 MR. PATTEN: Thank you, Your Honor.

22 THE COURT: Mr. Beckett, did you have something
23 you --

24 MR. BECKETT: I couldn't get back to my seat,
25 Your Honor. And, Your Honor, thank you very much for your

1 time and your patience.

2 THE COURT: I appreciate all of your patience and
3 time today. Obviously, you never cease to amaze me how
4 prepared you are for these matters. I appreciate that.
5 We'll go forward to the next hearing.

6 We'll be in recess.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the electronic recording of the proceedings in the
above-entitled matter, all done to the best of my skill and
ability.

Jonny B. Nordhagen